

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA
CASE NO: 09-062943 07

RAZORBACK FUNDING, LLC, et al,

Plaintiffs,

vs.

SCOTT W. ROTHSTEIN, et al,

Defendants.

_____ /

DAY 1 - AFTERNOON SESSION

DEPOSITION OF SCOTT ROTHSTEIN

DATE TAKEN: Monday, December 12, 2011
TIME: 1:00 p.m. - 5:00 p.m.
PLACE: 99 N.E. Fourth Street, Miami, FL

Taken on Behalf of Razorback

Examination of the witness taken before:

Terri Wright
United Reporting, Inc.
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IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA
CASE NO: 09-062943 07

EDWARD J. MORSE, CAROL A. MORSE,
and MORSE OPERATIONS, INC.,

Plaintiffs,

vs.

SCOTT W. ROTHSTEIN, et al,

Defendants.

Case No: 10-03767 RBR STETTIN VS. GIBRALTAR PRIVATE
BANK & TRUST CO.

Case No: 10-03802-RBR STETTIN VS. CENTURION STRUCTURED
GROWTH LLC, ET AL.

Case No: 11-02288-RBR STETTIN VS. FIDELITY CHARITABLE
GIFT FUND

Case No: 11-02368-RBR STETTIN VS. TD BANK, N.A.

Case No: 11-02473-RBR STETTIN VS. REGENT CAPITAL
PARTNERS, LLC ET AL

Case No: 11-02604-RBR STETTIN VS. MAPLE LEAF DRILLING
PARTNERS, ET AL

Case No: 11-02605-RBR STETTIN VS. DON KING PRODUCTIONS,
INC.

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CONRAD & SCHERER, LLP

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6 KOZYAK, TROPIN & THROCKMORTON, P.A.

7 *****

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11 BERGER SINGERMAN
12 Appearing on behalf of the Chapter 11 Trustee,
Herbert Stettin.

13 HARVEY SERBLOWSKY, ESQUIRE
14 Appearing on behalf of Platinum & Centurion Funds.

15 JAN ATLAS, ESQUIRE
16 Appearing on behalf of Levinson Jewelers.

17 MICHAEL GOLDBERG, ESQUIRE
18 AKERMAN SENTERFITT
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Unsecured Creditors.

20 THERESA M.B. VAN VLIET, ESQUIRE
21 JOHN H. GENOVESE, ESQUIRE
22 Appearing on behalf of the Trustee.

23 CARAN L. ROTHCHILD, ESQUIRE
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1 MARY BARZEE FLORES, ESQUIRE
2 MATTHEW DATES, ESQUIRE
3 STEARNS WEAVER
4 Appearing on behalf of Gibraltar Bank.

5 MICHAEL SCHLESINGER, ESQUIRE
6 SCHLESINGER & COTZEN
7 Appearing on behalf of Frank Spinosa.

8 CHRISTOPHER G. BERGA, ESQUIRE
9 LYDECKER DIAZ, LLC
10 Appearing on behalf of Szfranski.

11 RAMON A. RASCO, ESQUIRE
12 PODHURST ORSECK
13 Appearing on behalf of Frank Preve.

14 TUCKER CRAIG, ESQUIRE
15 BILLING, COCHRAN, LYLES, MAURO & RAMSEY, P.A.
16 Appearing on behalf of Rosanne Caretsky.

17 DAVID C. CIMO, ESQUIRE
18 GENOVESE JOBLOVE & BATTISTA
19 Appearing on behalf of the Trustee.

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21 LAW OFFICES OF ALEX HOFRICHTER, P.A.
22 Appearing on behalf of Federal Insurance Company.

23 JOHN MULLIN, ESQUIRE
24 GEORGE WALKER, ESQUIRE
25 TRIPP SCOTT
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Appearing on behalf of the Trustee.

SCOTT SCHMOOKLER, ESQUIRE
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CASEY CUSICK, ESQUIRE
Appearing on behalf of Emess Capital, LLC.

JAMES A. BLACK, JR., ESQUIRE
Appearing on behalf of St. Paul Fire & Marine.

BART HOUSTON, ESQUIRE
Appearing on behalf of Levinson, Pearson &
Associates, Roger Stone and Watch U-Want, Inc.

LAWRENCE LAVECCHIO, ESQUIRE
Appearing on behalf of the U.S. Government.

JACK SIEGAL, ESQUIRE
Appearing on behalf of Fepict, MS Group.

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1 (WHEREUPON, the following proceedings were had.)

2 MR. SCHERER: Good afternoon. I'm William
3 Scherer with the firm Of Conrad and Scherer and we
4 are going to take the rest of the day and tomorrow, I
5 guess, to ask you questions concerning cases that we
6 have filed in Fort Lauderdale in the state Court.
7 It's called the Razorback case, that's the name of
8 it. It's a horrible name, I should have put another
9 little Plaintiff first, it's called Razorback. I
10 don't know why I did that, but - big mistake.

11 But it's Razorback and 50 other investors, a lot
12 of whom you've met already. We have a procedure here
13 that, as I understand it, my partner Cocalis worked
14 with Mr. Lichtman and that is that the 2004
15 Examination transcript is going to be for a 2004
16 Bankruptcy Exam. And we don't have to try to use it
17 in our case, which is really good because bankruptcy
18 is - you can't understand it anyway; it's a place
19 where a dollar goes to become a nickel.

20 So, then we are going to have a transcript with
21 all of the people that are suing you and suing your
22 co-conspirators, alleged co-conspirators.

23 And I also understand that there are adversary
24 proceedings that are considered to be the
25 Plaintiffs. And so the Plaintiffs are going to

1 inquire of you through Friday afternoon and then the
2 Defendants have the next five days.

3 I'd like to get a stipulation, if I could, I
4 thought Mr. Lichtman did a very good job of asking
5 you some preliminary questions concerning this
6 deposition and why you should be believed.

7 As a matter of fact, I thought it was believable
8 testimony. I'm sure the Defendants will think --
9 they won't agree. But I would like to get a
10 stipulation that I could -- that we can use the
11 qualification questions in the 2004 Examination in
12 our big case, the main case, so that we don't have to
13 ask those questions again.

14 And in addition, it seems to me that we could
15 stipulate that the answers that he gave concerning
16 various individuals and identities of organizations
17 that invested in the Ponzi scheme could also become a
18 part of our second transcript of our second record.
19 So that I don't have to try to get you to say the
20 same thing in the same way you said it, because I
21 thought it was good testimony.

22 Mr. Lichtman, do you have any objection to
23 that?

24 MR. LICHTMAN: No, the Trustee, recognizing you
25 could not ask the questions as well as me, certainly

1 has no objection and thinks that is a logical
2 stipulation.

3 MR. SCHERER: Good. We have a stipulation to
4 that all the way around or are you stipulating that
5 I can't ask it as well as Lichtman?

6 MR. LICHTMAN: Both.

7 MR. SCHERER: Since he represented Gore and I
8 represented Bush, ask him how that came out for
9 him?

10 All right. That's good. Then what I would
11 like to do is have --

12 Terri, I'd like to have the transcript -- I'll
13 start out and then ask that the qualification
14 questions and the questions on identifying
15 investors be a part of this transcript. Okay.

16 And do you have the styles of all of the cases
17 for this second transcript that are going to be --
18 we're all going to be able to use in our various
19 proceedings?

20 (A discussion was had off the record.)

21 (A printed attachment from Michele Savoy will
22 be attached to the end of this transcript with the
23 information stipulated to.)

24 MR. SCHERER: Is there anybody here that would
25 like to announce an appearance so they could get

1 their case on the record? Any of the Defendants want
2 to do that? They're all shy. Okay.

3 We'll roll with it.

4 MR. LICHTMAN: It may be helpful the first time
5 any party has an objection to the record, keeping in
6 mind that an objection by one person qualifies as an
7 objection for all, so as to preserve, the speaker
8 should state his name and who the speaker represents
9 so the record can accurately transcribe it.

10 MR. SCHERER: Are you trying to encourage it?

11 MR. LICHTMAN: No, I'm trying to make sure we
12 don't have a mess.

13 MR. SCHERER: Thank you. Mr. Rothstein, for our
14 record, would you state your name, please?

15 THE DEPONENT: Scott W. Rothstein.

16 (Whereupon, Mr. Rothstein was sworn in to tell
17 the truth by the Court Reporter.)

18 DIRECT EXAMINATION

19 BY MR. SCHERER:

20 Q Mr. Rothstein, I'd like to have you tell us a
21 little bit about your educational background. I don't
22 think that was covered; and a little bit about the
23 practice of law and your successes before this big
24 failure in October - at the end of October of '09, at
25 least that's when we all learned about the big failure.

1 **Tell us about your education.**

2 A I went to University of Florida graduating in
3 1984. I received a Bachelor of Arts Degree. I went from
4 there to Nova Law School. I attended three years there,
5 graduated in 1988. Took the Florida Bar that same year
6 and passed. That's it for education.

7 As far as my work background, at the time that I
8 was in law school I was clerking for a law firm, Gunther
9 and Whitaker. I became an associate attorney there,
10 stayed there several years. There was a small commercial
11 litigation -- excuse me, corporate paper-type practice,
12 no litigation practice, out in West Broward; Kaplan and
13 Kusnick, Howard Kusnick and Norman Kaplan. I had known
14 them for years before. They recruited me to join them.
15 That first became Kaplan, Kusnick & Rothstein.

16 And then the firm went through a number of
17 different administrations; there was Kaplan, Kusnick &
18 Rothstein, then it was Kaplan, Kusnick, Rothstein,
19 Salamone, that's when Chris Salamone joined us. Then it
20 became Kusnick, Rothstein & Salamone when Kaplan left.
21 Then it became Kusnick and Rothstein when Salamone left.
22 Then it became Scott W. Rothstein, P.A., that was at the
23 time I shared space with Bruce Emmitt and Freddie Hadad in
24 the One Financial Tower, something like that.

25 From there I was recruited to join Philips,

1 Eisinger. Stu Rosenfeldt, who I had met several years
2 before, that firm was Philips, Eisinger, Koss, and
3 Rosenfeldt, something like that. There may have been
4 some other names in that.

5 **Q Did your practice start specializing over that**
6 **time up to that point?**

7 A At Gunther and Whitaker I had got a pretty good
8 taste of civil rights litigation working with Bobby
9 Schwartz. And I had always liked that area of law. So,
10 I kept trying to push in that direction. The whole labor
11 and employment thing came along when - all the way back
12 at the time that I was working with Norm Kaplan and
13 Howard Kusnick. We hired a young man named Michael
14 Pancier (phonetic) as a law clerk and he was taking a
15 labor and employment class over at Nova.

16 And we actually had first our first labor and
17 employment case against Domino's Pizza who came in,
18 that's when we started doing labor employment. We always
19 headed in that direction.

20 During those years when we were developing Scott
21 W. Rothstein, P.A. and I became a partner with Philips,
22 Eisinger, Koss, which became Philips, Eisinger, Koss &
23 Rothstein and Rosenfeldt, that's when we really started
24 specializing in the labor and employment field because
25 that was Stu's bailiwick.

1 When Stu and I broke off, the idea was to be a
2 unique labor and employment firm. Around then we started
3 to grow that firm and we branched off into all different
4 areas with the idea being that we were getting some
5 decent clients in as labor and employment clients and we
6 would branch off into other areas by hiring other
7 lawyers.

8 **Q You were recognized by Martindale Hubbell**
9 **somewhere along the line?**

10 A I was.

11 **Q And what was your rating with Martindale**
12 **Hubbell?**

13 A AV.

14 **Q Some of this may tie into the illegal activities**
15 **and helping you achieve it. I'm not sure I need to go**
16 **into it, but maybe. You ultimately were appointed by the**
17 **governor to the judicial nominating commission?**

18 A I was.

19 **Q Was that in '07, '08?**

20 A I don't recall the year.

21 **Q Somewhere around there?**

22 A Somewhere around there, yeah. I believe it was
23 more towards '08.

24 **Q Were you on a bar grievance committee?**

25 A I was.

1 Q You became a pillar of the community, I guess
2 would be a word, in terms of the philanthropic community
3 in Broward County during that period of time. I mean, I
4 know you were using other people's money.

5 A I was using other people's money so that's false
6 profit, I think you call that.

7 Q Yep.

8 A But, yeah, I had certainly established myself as
9 a player in the community.

10 Q Was that a part of your scheme in order to hold
11 yourself out as - to promote the Ponzi and the other
12 illegal activities; was that all part and parcel of it?

13 A That's an interesting question. It ultimately
14 became that. Looking back on it, I don't -- when it was
15 going on, I don't think it started out as that. I think
16 it went from someone thinking - me, thinking that I was
17 doing something very good to doing something very, very
18 bad.

19 Q So, up to the point of the - I've been calling
20 it the crash, we're talking about the end of the Ponzi
21 scheme; you call it going to Morocco and coming back from
22 Morocco so we'll communicate in those kind of terms.

23 Up until that time did you have any criminal
24 history at all?

25 A No.

1 Q Have you reviewed -- let me ask this way. On a
2 general sort of basis, can you tell us what you've done
3 to prepare for today? In a general sort of way. And
4 obviously I don't want you to say, you know, what you've
5 done with your lawyer, but you do have some free time?

6 A A little. I think that the best way to explain
7 it is, I think that all my cooperation since my return
8 has basically been in some way or another preparation for
9 this. I don't think I needed to sit down to prepare for
10 this deposition. I've been literally debriefing since I
11 returned and it hasn't stopped - as of the last couple of
12 days it hasn't stopped. I expect it to continue, so I
13 mean, it's ongoing preparation.

14 Q Do you have access to documents from your former
15 firm and files and things like that?

16 A Yes, I have access to tremendous amounts of
17 information now, yes.

18 Q Now, have you spoken to anyone other than your
19 lawyers - your lawyer Mr. Nurik and the government about
20 your testimony today? Excuse me, and we know that you
21 saw the Trustee -- you visited with the Trustee and his
22 lawyers for three days. Other than that and the
23 government and Mr. Nurik, have you spoken with anybody
24 else about your testimony today?

25 A No.

1 Q Have you been promised anything in return for
2 your testimony today other than your hopes that you can
3 work off some of that 50 year prison sentence?

4 A Nope.

5 MR. SCHERER: And Terri, when he says nope,
6 you're going to put no; right? We'll probably read
7 this to a jury in March.

8 THE DEPONENT: Sorry about that, no.

9 BY MR. SCHERER:

10 Q That's why I'm calling you Mr. Rothstein, too.
11 Is there anything preventing you from testifying
12 truthfully?

13 A No.

14 Q I mean, some of these questions you answered to
15 Mr. Lichtman's questioning that were probably more
16 artful; have you been promised anything in return, other
17 than a sentence reduction somewhere down the line
18 depending on what happens?

19 A I haven't even been promised that. I've been
20 promised nothing.

21 Q Good answer. So, you hope that that's what is
22 going to happen, but other than that no promises by the
23 government or anybody?

24 A I'm hopeful at the end of all this, the
25 government will see fit to ask Judge Cohn to reduce my

1 sentence. There's no promise made to me.

2 Q You know that I sued you in state Court on
3 behalf of about 50 people, 190 million dollars worth of
4 claims. You are aware of that?

5 A I am.

6 Q And you also have provided me with certain
7 information through your attorney, Mr. Nurik; correct?
8 Are you aware of that?

9 A I believe he has. I don't know what the context
10 of his conversations are. My conversations with Marc
11 obviously are privileged. If he shared information with
12 you, yes.

13 Q You know I wrote a letter to the Judge in your
14 sentencing that Mr. Nurik has been cooperating with me
15 and I wanted the Judge to know that?

16 A Yes.

17 Q You remember that; right?

18 A Yes.

19 Q And I guess you authorized Mr. Nurik to provide
20 information to me with the blessing of the government, I
21 think. Is that your understanding?

22 A That is my understanding, yes.

23 Q And why did you do that?

24 A I want to make sure all the investors get their
25 money back.

1 Q And you met with the Trustee for three days. I
2 just mentioned that to you and you said yes?

3 A Yes, I did.

4 Q About a month ago or two months ago, something
5 like that?

6 A Yeah, it was in August.

7 Q Did you provide truthful information to the
8 Trustee and me through Mr. Nurik?

9 A Absolutely.

10 Q And again, you view that you have a lot of
11 downside if you don't tell the truth in this whole
12 proceeding?

13 A Yes, dying in prison is considered a downside,
14 yes.

15 Q Good answer. Do you know that -- are you aware
16 that I filed a motion to pay Mr. Nurik as a court cost
17 for his attendance at these depositions for the next 10
18 days; are you aware of that?

19 A I was unaware of it until 10 minutes ago.

20 Q Do you have any money to pay him?

21 A No, sir.

22 Q Would you have been able to testify this week
23 without Mr. Nurik as your lawyer?

24 A No. If Mr. Nurik wasn't here I was not going to
25 testify.

1 Q All right. Does the fact that we filed a motion
2 to see if we could get the parties to jointly pay for
3 your attorney mean that you're going to give me any more
4 favorable testimony than anybody else?

5 A No, sir.

6 Q Thanks.

7 You know, in your dealings with the investors in
8 the Ponzi scheme - and we're going to talk about your
9 characterization of some innocent and some not so
10 innocent in a minute.

11 A Okay.

12 Q You fooled a lot of lawyers?

13 A I certainly did.

14 Q From the time this started until the end;
15 correct?

16 A That's correct.

17 Q By fooling lawyers you would answer their
18 questions, whatever were raised in terms of any aspect of
19 the Ponzi scheme in a way that would satisfy them that it
20 wasn't a fraud?

21 MR. CRAIG: Object to the form. This is Tucker
22 Craig on behalf of Rosanne Caretsky.

23 Bill, can I have a standing objection to form
24 since - if you're going to continue leading the
25 witness throughout this deposition?

1 MR. SCHERER: I sued him and I believe he's an
2 adverse witness so I believe I can lead but, yes, you
3 can have a standing on the leading.

4 Okay. Thank you, Tucker. Tucker represents
5 Miss Caretsky; correct?

6 MR. CRAIG: correct.

7 MR. SCHERER: We're going to talk about her
8 tomorrow?

9 THE DEPONENT: Okay.

10 MR. CRAIG: Move to strike editorial comments.

11 BY MR. SCHERER:

12 Q The lawyers that you fooled, I would like to
13 talk about them a little bit and see if I can identify
14 them and have you see if you can remember the
15 circumstance.

16 A Sure.

17 Q I've got the first on my list, Gerstin Savage,
18 that would be the law firm from New York, that did the
19 pre-purchase memorandum for Banyon Income Fund. Do you
20 remember those fellows?

21 A I certainly do.

22 Q And what do you remember about them in brief, in
23 summary?

24 A About the Gerstin people, not Banyon?

25 Q Right.

1 A I simply remember meeting with them. I met with
2 a lot of people, Mr. Scherer, through the Banyon people
3 in putting all the dog and pony show in trying to get
4 investors.

5 The general first hurdle was getting people
6 interested. Secondary hurdle was passing through their
7 due diligence process. And I remember a fairly extensive
8 due diligence by the Girstin people, but I don't remember
9 the specifics of it.

10 Q Obviously, at every step of the way with respect
11 to the lawyers that were doing due diligence or that you
12 dealt with in the Ponzi scheme, you satisfied them in
13 some way as to the legitimacy of the investment or the
14 scheme?

15 MS. ROTHCHILD: Objection to form.

16 A Correct. I did that. And the bulk of that was
17 done obviously with of the assistance Mr. Preve from
18 Banyon.

19 MR. SCHERER: If you're objecting to form on
20 leading, I'll give you a standing on so you don't
21 have to pipe up, Caran. And I don't think it's -- I
22 think I can ask leading questions because I've sued
23 him, I have a default against him, so you can have a
24 standing objection.

25 MR. CRAIG: We don't need to argue whether your

1 position relative to this witness is adverse and
2 You've given us a standing objection; that's fine.

3 MR. SCHERER: I did. We don't need to object
4 again.

5 MS. ROTHCHILD: My objection was more than the
6 leading. My objection to form still stands. Thank
7 you.

8 MR. SCHERER: Thank you. We'll see how that
9 goes.

10 BY MR. SCHERER:

11 Q Let me ask about the Hutchison, Steffen law firm
12 from Nevada. They gave opinions to Banyon. Do you have
13 any recollection of those guys?

14 A No.

15 Q Did you ever meet with them?

16 A I may have, but I have no independent
17 recollection of it. It's very possible that information
18 was provided from me through Mr. Preve and Mr. Levin to
19 them.

20 Q There was some issue, was there not, about
21 whether these structured payments were structured
22 settlements or not?

23 A Sure.

24 Q Because of a need for Court approval?

25 A Yes.

1 **Q Would you tell us about that briefly? What was**
2 **the problem?**

3 A On several occasions with several of the due
4 diligence groups, people were calling this structured
5 settlements. And from a Ponzi perspective, and bearing
6 in mind we never called it Ponzi when it was ongoing.

7 **Q Right.**

8 A From that perspective we had reason to make sure
9 that this was not structured. Because when you're
10 dealing with structured settlements you need other levels
11 of Court approval. It would have required the
12 manufacturer of literally hundreds upon hundreds of phony
13 orders, which would have led the entire scheme to
14 detection.

15 It was intentionally made in a way and presented
16 to that firm and the other firms that were looking at the
17 structure issue that it was merely a purchase of dollars
18 already in-house; that it was not a structured settlement
19 because the true definition of a structured settlement is
20 when someone is actually receiving payments over time
21 that has some other value. We didn't have a true
22 definition of a structured settlement, not by any of the
23 statutes.

24 **Q Were they a settlement that had been structured**
25 **turns into or bought out by a lump sum payment, there**

1 **needs to be Court approval; is that your understanding?**

2 A Right. Because in essence it's discounting the
3 purchase of an annuity. We weren't presenting it that
4 way. It would be as if my client sold their case, had
5 settled their case say for a million dollar annuity; they
6 would get paid a million dollars over time. The
7 Defendant perhaps would have to fund it with six or seven
8 hundred thousand dollars, whatever the varying rate was
9 my client was and then my client was going to sell it to
10 get money up front. That's not the situation.

11 This is a situation that we put together where
12 the Defendant fully funded it. And our obligation as,
13 quote, unquote, escrow agent was to disburse the money
14 over time in the hopes that it would convince the
15 Plaintiff to keep everything quiet.

16 Q I want to get into in a minute to what your
17 pitch was --

18 A Okay.

19 Q -- to the various people and see if we can
20 explore that. But let's identify some more firms. The
21 Greenspoon Marder firm. Did you have contact with them?

22 A I don't remember if I specifically spoke to
23 them. But I know Frank Preve spoke to them at length.
24 They were actually doing the opinion letter for Banyon.
25 I recall that. And I recall seeing the opinion letter

1 subsequently.

2 Q Did you ever read the statute on structured
3 settlements concerning when you had to have Court
4 approval to unravel them and when you didn't?

5 A I'm sure I did because it was sent to me by
6 multiple people. I remember an e-mail when Mr. Preve
7 attached it and sent it to me.

8 Q Did you ever have phony Court orders as any part
9 of your structured settlement or your Ponzi settlements?

10 A Only time there were false Court orders were in
11 the Morse case where there was the issue in the Jan Jones
12 matter pertaining to bonds.

13 Q We're going to get into that.

14 A There may have been another Order or two
15 floating around relative to the embezzlement that we were
16 doing for Mr. Picou and Mr. Peter at their respective
17 companies. But I don't recall off the top of my head
18 whether there were or not. It wasn't a standard for what
19 we were doing as far as the Ponzi scheme.

20 Q Now, how about Clifford Chance, that's an
21 international law firm. You recall the two fellows that
22 came down and visited with you?

23 A Yes.

24 Q Tell me what you have recall about those.

25 A I recall them doing fairly -- if I'm not

1 mistaken, Clifford Chance had somebody new that would be
2 Discala, Clockwork, et cetera. They did fairly
3 significant due diligence. Due diligence, Mr. Scherer,
4 varied depending on the quality of the firm and what
5 their principal told them to do.

6 So, but I remember Clifford Chance being very
7 specific in what they were looking at.

8 **Q Do you recall that they discussed the Razorback**
9 **transaction with you?**

10 A I recall them discussing transactions with me.
11 I don't specifically, again, for Razorback to me, that's
12 Discala, Von Allmen, that's all those people lumped into
13 one single group.

14 So, and my memory doesn't serve me as I remember
15 Razorback. I remember all those transactions being
16 discussed, yes.

17 **Q How about Morgan Lewis; do you know or do you**
18 **recall that Morgan Lewis out of Chicago and a national**
19 **firm replaced Clifford Chance?**

20 A Yes.

21 **Q And Michael Legamaro in particular?**

22 A I remember meeting with Mr. Legamaro, at least
23 talked to him on the phone. I think I met him
24 face-to-face also.

25 **Q Do you recall anything else other than -- you**

1 did meet him face-to-face, we'll talk about that in a
2 minute, but later.

3 Do you remember anything else about Morgan
4 Lewis, his due diligence --

5 A No.

6 Q -- or interaction with you?

7 A No. I remember the due diligence from Clifford
8 Chance being fairly thorough. And I remember
9 Mr. Legamaro being fairly thorough; other than that I
10 don't have any other recollection.

11 Q Not thorough enough?

12 A No.

13 Q Actually, did any law firm do due diligence
14 during this Ponzi scheme that actually discovered it was
15 a scheme and advised their clients not to invest?

16 A To my knowledge, no.

17 Q Robert Mazio; do you remember Robert?

18 A Robert Mazio?

19 Q He was --

20 A Was he a lawyer?

21 Q Yeah, he was a lawyer from New York that helped
22 out that Clockwork group, kind of their general counsel.

23 A I have a vague recollection. Oh, yes, yes,
24 yes. Because I remember at one point in time he got all-
25 to use my expression - hinked up about the transaction

1 and he was going to bail.

2 And then, if my recollection serves me, it
3 turned out - I believe there are e-mails to this effect,
4 Frank Preve sent me an e-mail that led me onto what was
5 really bothering Mr. Mazio and that was he wasn't getting
6 paid.

7 And what ended up happening was Preve said, we
8 need to get Mazio paid to get him back on the bandwagon.

9 **Q Adam Fisher was an investor/lawyer, also. Do**
10 **you remember him?**

11 A I don't remember Adam, no.

12 **Q He was from the Clockwork group.**

13 A I met with a lot of people from Clockwork. They
14 were shuffling people in and out. I'm sure I did meet
15 with him. I don't have an independent recollection of
16 it.

17 **Q He has a hedge fund, he's the one that put Jorge**
18 **Perez and Steven Ross in it.**

19 A Now I know who you're talking about.

20 **Q Did you know he was a lawyer?**

21 A Until you just said this to me I don't recall,
22 no.

23 **Q Do you remember that his general Counsel,**
24 **Lawrence Peters was involved also with him?**

25 A I don't have an independent recollection of

1 meeting him.

2 Q How about Larry Roven, who was the general
3 Counsel for Balamore?

4 A Larry I remember speaking to and meeting.

5 Q And was he involved in the due diligence before
6 the Banyon Income Fund or -- if you can call it due
7 diligence?

8 A Yeah.

9 Q A jury can't see you roll your eyes here, but I
10 do. Tell me --

11 A Larry was a -- as far as I was concerned, if you
12 speak -- he was -- you have to totally separate out the
13 difference between what the Girstin people more than
14 Clifford Chance attempted to do and what Larry was doing.
15 Larry was a mouthpiece for Barry and George and those
16 folks. Whatever they would tell him to do, it was my
17 observation from watching him operate, that he was doing
18 next to nothing.

19 There were times he was supposed to come in, for
20 example, to do audits and he did nothing.

21 Q And he worked for Barry Bekkedam.

22 A I understand he did. I thought he was his
23 in-house Counsel, to my recollection.

24 Q Do you remember a Mitch Krulich, who was
25 in-house Counsel for Rich Abbey?

1 A I remember --

2 Q **From --**

3 A Irracoy.

4 Q **Right.**

5 A I remember him -- that was the whole thing, you
6 know, all those guys.

7 Q **Fay Richie --**

8 A I remember speaking to their lawyers. I
9 don't -- I remember Fay because I remember having a drink
10 with him later down at Bova, but I don't have an
11 independent recollection of my conversations with him.

12 Q **Your interaction with them would be aware they**
13 **were doing what we call due diligence or investigations**
14 **for their principles and relatives that are making an**
15 **investment; right?**

16 A Yes.

17 Q **Now, how about Mario Fontez. Do you remember**
18 **him?**

19 A No, don't remember the name off the top of my
20 head. What did he do?

21 Q **Maybe you will. He represented an investor who**
22 **was going to invest in the intracoastal feeder**
23 **organization that Doctor Rosenblat was putting together**
24 **in February of '09?**

25 A He is from up north?

1 **Q Doctor Rosenblat?**

2 A No, Rosenblat is down here. I'm talking about
3 Mario.

4 **Q No, Mario is with the firm of Greenberg,**
5 **Traurig.**

6 A I don't have an independent recollection, but I
7 remember Ari Glass and Bo Rosenblat shuffling me around
8 to a bunch of people. We did a thing up in New York and
9 New Jersey where they were driving me from investor to
10 investor to meet these people. And I did a bunch of dog
11 and pony shows for them down here.

12 **Q I want to get into your dog and pony shows in a**
13 **minute.**

14 **Mr. Fontez sent you a list of pretty**
15 **comprehensive questions, some 20 or 22 questions that he**
16 **needed to have answered. It's my understanding you met**
17 **with him in your office.**

18 A It's totally possible, Mr. Scherer. The fact
19 that I don't have an independent recollection of it is
20 probably more of a function of the fact that I literally
21 looked at hundreds of thousands of pieces of paper in the
22 last two years and hundreds if not thousands of hours of
23 conversations so, me not have that recollection doesn't
24 mean that it didn't happen. And if you have something
25 you want to show me, I'm sure it can refresh my

1 recollection.

2 Q I do. They are really good questions. I would
3 like to see how you answer them here for us.

4 By the way, while we're on -- you triggered a
5 thought. Do you know how many investors invested in the
6 Ponzi scheme?

7 A That's a very interesting question. At the time
8 that I returned from Morocco upon the crash --

9 Q Yes.

10 A -- I believe I had a handful of investors. My
11 first meeting with the government, not to get into
12 particulars, but my first meeting with the government I
13 was shown a list with hundreds of people on it. 95
14 percent of whom I had never met or heard of.

15 As it turned out, my feeder funds, some of whom
16 were representing to me they were using their own money
17 were actually using substantial amounts of other people's
18 money, so I didn't know a lot of those people.

19 Q Do you know how many Ponzi deals you did; how
20 many Ponzi investments you did?

21 A Hundreds. I don't know the total. Over 300,
22 just with Levin.

23 Q So that if I said that the records looked like
24 about 600 deals with 300 investors or so, plus or minus
25 50?

1 A That --

2 Q Any way of verifying that in your memory?

3 A In my memory? It doesn't shock me. Doesn't
4 seem like -- given the amount of money we were moving
5 back and forth on a daily and weekly basis, that doesn't
6 surprise me at all. The number of investors surprises
7 me.

8 Q How much money do you think you've moved in the
9 Ponzi as opposed -- we know your bank accounts and we
10 know that through the T.D. account and the Gibraltar
11 account - that will come out in the next couple of days.
12 But do you have an idea of how much money you were
13 stealing during this time?

14 A I'll differentiate for you between what we
15 actually took and what was moving through the accounts.
16 It was well over a billion dollars that moved through the
17 accounts.

18 Q Actually two billion, you're a billion shy.

19 A A billion here, a billion there, pretty soon --

20 Q Adds up. I believe there's actually two billion
21 that went through the accounts.

22 A I never stopped to add it up. When you're in
23 the middle of something as frenzied and harried as a
24 Ponzi scheme, your only concern is not how much you're
25 moving through your accounts but do you have enough to

1 pay the investors and do you have enough new or old
2 investors in the pipeline to invest or re-invest to keep
3 it alive. That becomes your sole focus.

4 **Q Were you trying to keep an eye in a rough sort**
5 **of way as to how much you'd have to make from Q Task and**
6 **some of these others to pay these people back?**

7 A Yes, but that was in terms -- that wouldn't have
8 been a billion or two billion running through the
9 account, that would have been how much money do I need to
10 give all these people their money. Okay. And a bunch of
11 interest.

12 It was always my thought that at the end, if
13 there was a, I'll call it the semi collapse, that these
14 people were making so much money and many of them made so
15 much money, that giving people back their principle plus
16 a substantial but not necessarily all of their interest
17 would have sufficed and we would have been able to walk
18 away from this.

19 **Q Did you have a number that you kept in mind as**
20 **the time continued on as to how big that number would be?**

21 A It varied from three to 400 million dollars
22 upwards of seven, eight, 900 million dollars.

23 **Q Seven, eight, nine would have included the**
24 **gains, the promised gains?**

25 A Certain gains, not all the gains, but certain of

1 the gains, yes.

2 Q One time in about April, I remember an e-mail
3 where you said I need 98 million dollars to come clean
4 with all my investors.

5 A I don't recall that specific e-mail but it
6 certainly sounds like something I might write.

7 Q I was wondering how you would know that was the
8 number?

9 A It would have -- it sounds to me like it's an
10 e-mail written about how much I would need at that moment
11 to return principle to people - doing one of the
12 calculations that we had done from time to time was how
13 much money have we taken in, how much have we paid back,
14 understanding that there were substantial numbers of
15 people who had made a substantial amount of money. Those
16 people would not need -- even though were they
17 technically owed more interest - had it been a real deal,
18 it wouldn't have required any further funds from us. It
19 would have gone away with what was called ill-gotten
20 bootie.

21 Q We're going to show you some of that.
22 Who is the "we"? You said we calculated or kept
23 this?

24 A Me and Debra, me and Irene Stay. When I say
25 Debra, Debra Villegas. Me and Irene Stay, me and David

1 Boden.

2 Q Do you remember Ned Seigel? He was an investor
3 through Barry Floresku and Ned Siegel?

4 A Yes.

5 Q Lawyer, Ambassador Siegel?

6 A Yes, I remember meeting.

7 Q Were there any other lawyers that invested that
8 you recall other than Ned Siegel?

9 A I don't recall off the top of my head. I
10 remember there were people at the hedge fund. I remember
11 Brian Jebwab who was the main due diligence guy for
12 Huberfeld Group, Centurion and Platinum Level 3,
13 I remember he was a lawyer. Gil Colter was a lawyer,
14 both the hedge fund guys, it may have been intertwined in
15 there, lawyers -- Mali Lifshitz may have been a lawyer.

16 Q Klein?

17 A Mel Klein, sure. Oh, you know what, yeah, Mel
18 Klein, Barry Damson, they were both lawyers, not
19 practicing, but they were lawyers.

20 Q Can you think of any other lawyers that we have
21 left out that you had presented your Ponzi - successfully
22 presented the Ponzi to?

23 A Off the top of my head, Mr. Scherer, I can't
24 recall. I'm sure there are documents reflecting those.
25 I almost, without fail, would never give a dog and pony

1 show without consulting with Mr. Preve first.

2 Q And why was that?

3 A I relied on him from a due diligence banking
4 standpoint. He had extensive experience having been the
5 president of a bank in Miami for some period of time, and
6 having other roles, he seemed to me to be very savvy with
7 regard to manipulation of the numbers and the like and
8 manipulation of financial documents.

9 And when it came down to the technical side of
10 the dog and pony, not the lawyer side, not the show
11 boating side, but the technical side, having the
12 technically correct answers, I relied on him to a large
13 extent.

14 Q In your letter to the Judge that we made
15 reference to -- let's go ahead and mark that. I don't
16 know whether Mr. Lichtman marked it or not. But we'll
17 get rolling this way.

18 MR. KOPAS: June 2, 1010 letter to Judge Cohn.

19 It's bait Rothstein S000001 through 000012.

20 (Plaintiff's Exhibit No. 1 was marked for
21 identification.)

22 BY MR. SCHERER:

23 Q I know you recognize that. I've got a couple of
24 questions on there.

25 A Sure.

1 Q If you'll turn to the Page 5.

2 A Yes.

3 Q You state there as -- I have got it highlighted
4 for you, that will be on the exhibit, to speed this up.

5 A There you go. Okay.

6 Q Page 5, don't you have highlights there?

7 A Yes.

8 Q I kept orchestrating these fictitious loans to
9 support the firm in its ludicrous growth, line my pockets
10 and the pockets of my co-conspirators?

11 A Yes.

12 Q Have you named all the co-conspirators in
13 Mr. Lichtman's questions or are there more?

14 A Here's what you need to do for me, you need to
15 clarify the question for me as to Ponzi or extended
16 Ponzi. One of the things when you're questioning me that
17 I think you need to keep in mind so that I can to give
18 you precise answers is that, as you pointed out, what I
19 may have perceived initially to be something good I was
20 doing in the way I was establishing myself; and obviously
21 turned into a massive criminal enterprise had many, many,
22 many tentacles. There were many arms, there were
23 political arms, there were law enforcement arms, there
24 were arms all over the place in every facet, as the Judge
25 pointed out when he sentenced me, in almost every facet

1 of daily life.

2 It was ego fueled. We were rolling, you know,
3 we were -- we were all, me, Stu, Lippman, Adler, Boden,
4 we were living like rock stars; private jets, massive
5 amounts of money. There were lots of things that kept
6 fueling that. As I'm sure you realize from looking at
7 everything, there came a point in time when the only
8 portion about it, which was money, was keeping the Ponzi
9 going. We had more than enough money to fuel our
10 lifestyles.

11 It was the power that got ahold of us and kept
12 pulling this forward; the more power, the more money, the
13 more money the more power, it kept going back and forth
14 until in exploded.

15 **Q How much do you think you devoted to your**
16 **lifestyle and your partners and people in your firm's**
17 **avenue as opposed to passed along to Ponzi investors, the**
18 **old investors with the new investors' money; do you have**
19 **any --**

20 **A** It would have to be hundreds and hundreds of
21 millions of dollars. I know that I probably personally
22 spent that myself over 200 million dollars, something
23 close to it. You know, we were -- between the money we
24 were actually pulling out and the money we were spending
25 for lavish parties, trips, dinners, presents, gifts for

1 wives, gifts for mistresses, our mistresses, the numbers
2 are astronomical.

3 Q I would like to concentrate on the Ponzi
4 settlements in the beginning and then we can maybe talk
5 about how it extends over as we talk about these
6 co-conspirators. You gave an interesting answer to
7 Mr. Lichtman concerning how the Ponzi started out as a -
8 I guess loan sharking or just some kind of borrowing
9 money and paying it back?

10 A It would be reverse loan sharking because I was
11 paying too much interest. I was loan sharking myself.

12 Q Looked like you were -- seemed like your
13 investors might have thought you were loan sharking for
14 them. Wasn't that your --

15 A They may have. You have to understand, I was
16 dealing with a group of investors at that point in time:
17 Lifshitz, Tinachio, Morse, people that were very close to
18 me. They couldn't have cared less what was going on as
19 long as they were making money. We had a lot of
20 discussions to that effect about those type of things.

21 So, what I perceived was we had a shortfall of
22 cash and I was greedy, and in some ways I was frightened
23 of what would happen if we failed.

24 And I said, look, in my own head to justify
25 these things - when you get in this mode, you become self

1 justifying. Everything is a rationalization for
2 yourself. Until you step back to look at the horrors
3 you're creating, it's just rationalization after
4 rationalization. I'm going to borrow this money because
5 there's really no deal but Dominic is making hundreds of
6 thousands of dollars, millions of dollars, Lifshitz is
7 making millions of dollars, Morse is making millions of
8 dollars. What the hell difference does it make?
9 Everybody is happy. Ultimately, until it exploded,
10 that's the way it was with these guys. Everybody was
11 happy. Nobody had any complaints. Nobody asked the
12 questions.

13 Q Did --

14 A In that group.

15 Q I'm going to focus on that a little bit later.

16 On your Page 6 you said: They helped you take the Ponzi
17 scheme to a new level. Who were you referring to there
18 that helped you take the Ponzi -- co-conspirators who
19 helped you take the scheme to an entirely new level?

20 A The Ponzi scheme really got legs when I was
21 introduced to George Levin. It would have been Levin,
22 Preve.

23 Q That's who you were referring to that in letter?

24 A Yes.

25 Q As taking it to a new level?

1 A Yes.

2 Q When you originally started doing deals with
3 Preve and Levin and that would be through Banyon, I
4 guess, or I don't know --

5 A Originally when I started it, it was just
6 directly with the Levins.

7 Q As I understand it, it was just this much cash
8 in and I'll pay you this much cash back?

9 A Other than the initial explanation that it was
10 funding people who had settled cases, there was no
11 paperwork other than -- I believe the only thing we were
12 using at the time was the same thing with Lifshitz,
13 Tinachio and Morse, Promissory Notes.

14 Q That was back in '06?

15 A Um-hmm.

16 Q Your first deals with Levin. When you did those
17 first deals with Levin in '06, were you making reference
18 to a phony case that you had settled or did you in the
19 beginning just do the same that you had been doing with
20 these other fellows?

21 A No, I think I actually made references to cases
22 back then, but I don't have a specific recollection, it's
23 too many cases ago.

24 Q Before Levin, you had been doing loan
25 transactions with these other fellows that you identified

1 **a few minutes ago?**

2 A Call them -- they were Promissory Note
3 transactions, although the explanation to them if they
4 required an explanation was generally very brief. And it
5 was nothing near -- in other words, there were a group of
6 people that needed no dog and pony show. It was, I have
7 a client, this is the way you can make money, you put in
8 this much money, you get this much money out. That's all
9 it took.

10 Q You said Promissory Notes, I know that we're
11 going to get into a lot of these that you didn't even
12 have Promissory Notes, just had e-mails?

13 A Sure. There were probably a hundred millions of
14 dollars of cases that I funded with Banyon Investment
15 Fund, BIF, there was no paper at all, e-mail. We papered
16 it later, if we even papered them. I'm sure actually
17 when this collapsed there was no paper for probably
18 between 50 and 100 deals.

19 Q So that after the collapse, those 50 or 100
20 deals got papered after the crash?

21 A No, no, no. I'm saying that at the time of the
22 crash there were probably dozens upon dozens of deals
23 that had never been papered. We were in a frenzy point -
24 when I say "we", it's really Boden, me and Preve. We're
25 frenzied trying to get payments. So Preve and I more

1 than anything are moving money back and forth like
2 lightening. We're moving tens of millions, if not
3 hundreds of million dollars back and forth, over days in
4 a week. We weren't papering deals.

5 You should see e-mails from Preve to me saying
6 we need to document these deals, if we get audited we're
7 dead. If this goes public - because of the people we
8 were dealing with with BIF, we're dead.

9 We went as fast as we could. The problem is the
10 only people creating deal packets was initially Debra.
11 And then Debra and David Boden's secretary and Boden
12 himself. So, we only had two people creating these full
13 deal packets and running around trying to get fake wire
14 forms and all this other stuff, there's a lot going on,
15 trying to go back and paper old deals, it was secondary
16 because it wasn't netting any additional money to us.

17 **Q Because all the money was going out to pay the**
18 **older investors?**

19 A Correct.

20 **Q In the Ponzi?**

21 A Correct.

22 **Q Did you have some kind of e-mail paperwork from**
23 **you to Preve that would establish the deal, if you will,**
24 **the payment that was the terms of the deal or were you**
25 **just calling saying I need more money?**

1 A No. I think that probably 99 percent of the
2 time, probably 100 percent of the time, there may have
3 been a few without e-mail starters but I don't recollect
4 any. It would have been -- it was always the same thing,
5 Fund, ROI, number of months. That's how it started.

6 Q Okay. So that in the end you couldn't keep up
7 with the volume of the money that was coming in and
8 needed to go out to pay the old investors?

9 A That certainly became the case. If you're
10 asking me why we ended up with a lot of deals that didn't
11 require paper, we were trying to bring in huge amounts of
12 money. We had Preve in the game. We had the Balamore,
13 Bekkedam people in the game. We didn't -- Rogan was
14 doing nothing so we had all kinds of money coming in
15 without paper. I'm sure Barry and then fund -- I would
16 be guessing.

17 I suspect that they never knew that the people
18 putting the money in, certainly the Von Allmens, never
19 knew there was no paper in these deals. There was no
20 paper in these deals and Preve and Barry, and Rogan knew
21 it.

22 Q Barry, Preve, and Rogan knew that the
23 settlements that the Banyon Income Fund was supposed to
24 be -- that Levin was purchasing with Banyon Income Fund
25 money, they knew that there were not papered settlements?

1 A Yes. And let me make sure we have this exact.

2 Q Yes. Okay.

3 A Preve knew, Levin knew. I knew, of course.
4 Barry knew, how much Rogan knew, I can't tell you with a
5 hundred percent certainty and I do not want to guess.

6 Q The structure of the Banyon Income Fund was it
7 was a hundred million dollar fund, and the investors got
8 15 percent - excuse me, 20 percent the first year and 15
9 percent the second, I believe. Had the money locked up
10 for a year and Levin was supposed to buy - purchase
11 settlements from you that were then to be held as
12 collateral for the investors to back their investment in
13 the Fund.

14 Is that the way you understand that was supposed
15 to work?

16 A I understand that now. Back at the time, I
17 was -- Let's refer to that as the back office dealings,
18 much as it would be in any business. I was only
19 concerned with the front office dealings, getting in as
20 much money as possible and paying the investors.

21 As far as generating the new money, my role was
22 the dog and pony show. All the other matchinations, what
23 percent people are going to pay and how long the money
24 was going to be locked up, that was all Levin, Preve,
25 Szafranski, they came up with all those packages and all

1 that stuff. From time to time they shared it with me, it
2 was of no interest to me.

3 Q The volume of the paperwork that would have been
4 required during the last three months alone would have
5 been pretty overwhelming. Do you know how much money you
6 took in in the last three months of this Ponzi scheme
7 before you crashed?

8 A I couldn't even render a guess, had to be
9 hundreds and hundreds of millions of dollars.

10 Q I think the accounting forensic - assume for the
11 purposes of this examination, that it's 500 million
12 dollars.

13 A That wouldn't surprise me.

14 Q In and out during that period of time. Keeping
15 up with all the accounting of accounting for how much
16 money you had to pay out and when you had to pay it out
17 on a timely schedule --

18 A Right.

19 Q -- was that done in your office by your
20 administrative staff primarily?

21 A Actually it was a little odd. It was supposed
22 to be done by my staff, but I don't know -- the only word
23 I can think of is *fashimal. My accounting staff was
24 sideways. Irene, besides trying to keep up with all the
25 regular accounting of the law firm, which I don't believe

1 she was completely qualified to do, even close to it, was
2 trying to get all these payments straight, watch all this
3 money going in and out and the like. We were constantly
4 off with regard to our numbers.

5 Preve, on the other hand, as I said, Preve was
6 my money guy. He kept very good track. Szafranski, he
7 kept great track what was owed. You'll see - which to me
8 was always an oddity from anybody looking at it from the
9 outside, instead of the company handling investments
10 knowing what the investors are supposed to be paid, we
11 actually had to have the investors or agents telling us
12 what to pay on a daily, weekly, monthly basis.

13 **Q You state on Page -- you're going to help me**
14 **with the time; right?**

15 **-- that you even sent e-mails falsely**
16 **exculpating those who acted with you, is that --**

17 **A Where is this?**

18 **Q Page 9, I have it highlighted there up at the**
19 **top.**

20 **I want to know who did you send e-mails to**
21 **falsely exculpate?**

22 **A George Levin, Frank Preve, possibly some of the**
23 **other guys, maybe Stu. I don't remember. I was in a -**
24 **say that I was in a bad state of mind would be the**
25 **understatement of the millennium.**

1 It was my intention at that point in time to
2 kill myself, so I was going to try to bail as many people
3 out as possible.

4 **Q All right. I'd like you to take a little bit of**
5 **time and ask you to explain how you would handle issues**
6 **raised by your investors; for instance, if an investor**
7 **would question you to say this is too good to be true,**
8 **how would you explain that?**

9 A I would tell the investor that these people were
10 generally going through complete hell, meaning my
11 Plaintiff, in their job or former job, that by the time
12 the case was settled that they were under the gun. I
13 told them things such as, they were about to lose their
14 homes, homes were in foreclosure. They were not going to
15 be able to keep their children, children would have to go
16 live with grandparents, they were going to have to move,
17 they would lose everything. Their entire lives were on
18 the line. I played on that particular scenario and
19 emotion saying look, if you've only been making -- if
20 you're a woman making 40 - 30, 40, 50 thousand dollars a
21 year and getting by and you're being offered a million
22 dollars or two million dollars, whatever it may be, your
23 life is still going to be a whole hell of a lot better if
24 you take 750,000 of it now. And that's the way we
25 explained it to them.

1 Q Would you also - or did you ever explain that
2 cases were referred to you by out-of-town lawyers who had
3 been negotiating and couldn't get the case settled --

4 A Yes.

5 Q -- because the defendant wouldn't pay a lump sum
6 and the Plaintiff wouldn't accept anything but a lump sum
7 and they sent the cases to you because you had investors
8 that could bridge the gap?

9 A Yes, we did. And what we did with that
10 basically was we said that we brought the cases in, we
11 conducted our own investigation. You know that was a
12 major part of what we were doing was the phony underlying
13 investigation of the defendants. And that we were the
14 ones capable of providing the funding through our
15 investment outside investors to enable the Plaintiff to
16 settle, that the cases wouldn't settle but for this.

17 Q Heard some testimony in Court the other day that
18 you told one of the investors that you had - you would
19 refer a lawyer or you had negotiated to a number and that
20 the defendant wanted confidentiality at the end. And you
21 told the Defendant it's going to cost you more money to
22 get confidentiality and periodic payments and therefore
23 the Defendant --

24 A Yes.

25 Q -- the Defendant would pay the difference not

1 the Plaintiff?

2 A We used that frequently, yes.

3 Q So that it looks like they weren't taking
4 advantage of a Plaintiff or you weren't in breach of some
5 duties to a Plaintiff?

6 A Yes.

7 Q Putting them in a bad deal?

8 A That's correct.

9 Q I saw an e-mail in these millions of pages of
10 documents that we had from Preve to you or to somebody
11 explaining that you had 15 national firms referring you
12 business and that you spent a million dollars a month on
13 the Internet to communicate with lawyers to send you
14 cases?

15 A Yes.

16 Q What was that all about?

17 A At the point in time that the -- it was more the
18 hedge funds - at the point in time that all the heavy due
19 diligence was coming back around, people wanted
20 explanations as to how we could have the size case flow
21 that we had, and that is the scenario that was created,
22 that we were spending huge amounts of money advertising,
23 referral sources and the like, putting our name out there
24 and getting cases in.

25 Q Let me show you -- I was looking for the next

1 question when you answered that last one. Did you have
2 anything on the Internet at that time?

3 A I believe -- the only thing we had our website,
4 firm website and we had yellow pages dot com. But we had
5 nothing. We told them that we had people with 800
6 numbers. As a matter of fact, for one of the due
7 diligences we actually brought Steve Caputi in to pretend
8 to be the owner of the 800 numbers that was sending us
9 cases and he fabricated the information to the investors
10 that way.

11 Q Who is we?

12 A Me. At this stage it would be me, Preve, and
13 David Boden, and Szafranski to a lesser extent.

14 Q You have a recollection of trying to buy a 1-800
15 number that was fellows in New York that had 1-800
16 retired judge?

17 A Yeah, yes, yes, yes. Jack Simony tried to sell
18 that to us. It was a combination, it was coming from
19 Jack Simony and Mel Lifshitz. I think Mel was a major
20 push behind and Jack was trying to get us to buy it.
21 Someone had a major hookup with a bunch of retired judges
22 and they wanted us to buy that.

23 Q Let me show you what we're going to mark as our
24 next one, and it's some e-mails that set up a meeting and
25 a transmittal of questions relating to the Ponzi that was

1 involved with the Intracoastal Fund that was being
2 established. We're going to talk a lot about that Fund
3 tomorrow, but I want to show you this. And we're
4 marking it.

5 MR. KOPAS: This is Plaintiff's 2. Series of
6 e-mails entitled subject: lawyers
7 question's, Intracoastal Bates 1301 continuously to
8 1305.

9 (Plaintiff's Exhibit No. 2 was marked for
10 identification.)

11 BY MR. SCHERER:

12 Q And the questions are attached as well.

13 MS. ROTHCHILD: Was this document part of the
14 production that was produced on the 8th or the
15 documents provided to us this morning?

16 MR. SCHERER: I think it's the morning.

17 MS. ROTHCHILD: Then we have an objection to
18 submission of these documents outside of the
19 December 8 cut off.

20 BY MR. SCHERER:

21 Q Do you recognize this at all?

22 A I don't have an independent recollection of
23 this.

24 Q There's some testimony in our case that as a
25 result -- Let me ask you this. Take a look at the

1 questions - the 22 questions that are attached there.

2 A Right.

3 Q Does that refresh any recollection as to looking
4 at these questions and formulating answers to them that
5 you did in a conference with attorney Mario Fontez?

6 A I don't have specific recollection of this
7 specific set of questions. That certainly doesn't mean I
8 didn't receive it. I'm sure I did. The other thing is
9 that these are very similar to the questions we received
10 from a lot of other due diligence people. So, it all
11 becomes kind of a mish-mosh. It looks to be the type of
12 question I would be asked on a regular basis.

13 Q This level of questions - and this was in March
14 of '09, appears to be pretty sophisticated diligence?

15 A It's more sophisticated than most of what we
16 got.

17 Q Look at No. 5, it talked about the financial
18 advisor?

19 A Yes.

20 Q That would be the purchaser of the stream of
21 payments, that would be the Ponzi investor? Is that who
22 the financial advisor was? Didn't your documents make
23 the financial advisor - make the investor a financial
24 advisor some way?

25 A Yes.

1 Q So they could get in the privilege about what
2 was going on there?

3 A That's correct.

4 Q Now, look at No. 10, if you will. If you'll
5 look at the last sentence there in that paragraph it
6 says: Is there any instrument signed to establish the
7 trust relationship between the Plaintiff's attorney as
8 Trustee and Plaintiff as beneficiary or does Plaintiff
9 attorney simply consider these funds client funds held in
10 the trust account. And do you recall the answers that
11 you gave?

12 A I don't have the slightest recollection.

13 MS. ROTHCHILD: Object to the form.

14 Q You had some of the deals call for you to hold
15 money in a trust account with other funds?

16 A Yes.

17 Q A master trust account, co-mingling of investor
18 funds?

19 A Correct.

20 MR. CRAIG: Form.

21 Q Correct. And there would be huge numbers of
22 amounts of money allegedly in these accounts?

23 A Correct.

24 Q Did you create false account balances for those
25 accounts --

1 A Yes.

2 Q -- from time to time?

3 A Yes.

4 Q Did you give promissory notes as a part of the
5 deal packages later on, let's say towards the last six
6 months of the Ponzi scheme, along with the deal packages?

7 A For the deal packages we did. I believe, unless
8 someone said they didn't want a Promissory note, I
9 believe promissory note was a standard form in every
10 package.

11 Q Although the note doesn't bear an interest rate
12 it just had the same terms as the deal?

13 A Right.

14 Q Do you recall what you told the investors as to
15 why R.R.A. was doing the promissory notes?

16 A I don't recall off the top of my head why we
17 were doing the promissory notes except - the only thing I
18 do recall early on is that it was a secondary or third or
19 some other layer of protection for them in the form of
20 almost an additional guarantee by us that they were going
21 to receive their money. It was additional assurance.

22 Q Was it more like a guarantee than a Promissory
23 Note?

24 A Yes.

25 Q Guaranty payment out of trust account of those

1 funds that were supposed to be held in trust?

2 A It was simply what Frank and I had -- the whole
3 reason it stayed in, Mr. Preve and I discussed from time
4 to time the fact that anything we could do to add
5 additional levels of security for the investors was
6 good. So, it stayed in the package unless someone said
7 they didn't want it.

8 Q Now, the Epstein settlements were used by you
9 based on actual cases with Jeffrey Epstein --

10 A Yes, on that.

11 Q -- Palm Beach person?

12 A Yes.

13 Q Do you recall that?

14 A Yes.

15 Q And do you recall that my clients were D-3
16 investors who invested in that?

17 A I do.

18 Q That would be Discala and Von Allmen and other
19 people of the Razorback group?

20 A I do.

21 Q Do you recall when they came to your office and
22 you brought down boxes for Michael Legamaro to review?

23 A The boxes were actually already in my office.

24 Q Well, there's some testimony that you called and
25 asked Ken Jenne and Fistas to bring them down and they

1 brought down boxes for you at a show, as to show these
2 are the real cases?

3 A I believe that a substantial number of the boxes
4 were already in my office. And there were additional
5 boxes and I did have people bring them to me. I don't
6 remember who brought them to me, but yes.

7 Q And do you recall Mr. Legamaro, what he did with
8 respect to his review of those boxes of the cases?

9 A I recall bringing the boxes in, the only real
10 recollection I have of that meeting was after meeting
11 with them and bringing the boxes in, I walked out for a
12 period of time, let them go through the boxes, came back
13 in, answered questions that they had and we went forward.

14 Q You pulled out some kind of a flight manifest;
15 do you recall that?

16 A Yeah. At some point in time I believe it was
17 either Brad Edwards or Russ Adler pointed out to me that
18 one of the pieces of evidence they were using in the
19 actual case was the flight manifest. And I actually used
20 that to make a fairly big show. I found that those most
21 of the time in these cases the more significant our
22 underlying investigation was and the more tantalizing it
23 was, the more interested the investors got. We had that
24 real piece of evidence and we used it to our advantage to
25 attempt to secure the investor.

1 Q Did Russ help you make it more tantalizing, that
2 manifest --

3 A Did he help me?

4 Q Did he help you make it more tantalizing?

5 A The only way Russ would have helped me make it
6 more tantalizing was by just discussing the size of the
7 case. But other than that, no, he didn't do anything
8 that I recall during that meeting with regard to the
9 actual manifest. I did.

10 Q Didn't you add some sensational names to the
11 manifest that weren't there to start with?

12 A I did. I did.

13 Q Tell us about that.

14 A There were -- I said that there were additional
15 manifests -- if I remember correctly, I said there were
16 additional manifests that we had discovered containing
17 Bill Clinton's name, Prince Andrew, all being shown
18 flying with young girls on the plane.

19 Q And do you know whether -- let me back up.
20 The original manifests that were in evidence in
21 the real case, didn't have those names on it?

22 A No, but it's interesting you bring that up
23 because the way I came up with Bill Clinton and Prince
24 Andrew was Mr. Adler and Mr. Edwards both told me on
25 different occasions that the reason the case - when we

1 were discussing the actual real case, the reason it was
2 becoming so, quote, unquote, tasty because they had
3 information that he had been flying Bill Clinton around
4 and Prince Andrews around, the piece that was missing
5 from the real case was the connection to the young girls.

6 Q The young girls - connection to the young girls
7 was fiction, it was a lie?

8 A Not as far as Mr. Epstein is concerned but as
9 far as the other people are concerned, yes.

10 Q Do you know whether Adler - Mr. Adler
11 or Mr. Edwards injected any of that into the depositions
12 in the real case in order to assist with the Ponzi?

13 A I don't know -- No, no, I don't know whether
14 they did that or not. I wouldn't think they would.

15 Q When you were asked - this morning about Brad
16 Edwards you really hesitated. I don't know if you know
17 you did that. You were answering yes, no, maybe so. On
18 him you really paused.

19 A On the question as whether or not he would have
20 turned us in, you mean?

21 Q Whether he was a player or whether he was
22 involved and you didn't quite answer.

23 A Just because of the way I knew Brad and
24 socialized with him, I did not know that he was at that
25 level. There are certain people, Barry Stone, second he

1 found out about it would have absolutely done what was
2 appropriately - supposed to do from an ethical
3 standpoint. And then there were people who I would say
4 would never do that. And then there are people in the
5 middle. I believe Brad Edwards is probably in the
6 middle.

7 Q Did you have your investigators, that be Jenne
8 and Wayne Black and Fistas investigate Epstein himself
9 and try to get evidence from Epstein --

10 A I didn't know --

11 Q -- do you have of any knowledge of that?

12 A No, sir.

13 Q Did you instruct them to file any kind of
14 pleadings in federal Court or anything like that in order
15 to help you promote the Ponzi?

16 A No. As far as the Epstein case is concerned,
17 Mr. Scherer, I never asked Mr. Adler or Mr. Edwards or
18 anyone else associated with that case to do anything for
19 the purpose of furthering the Ponzi other than bring me
20 the boxes. That was all my creation.

21 Q Thank you.

22 I'm going to talk to you about Ted Morse a
23 little bit. You said he was one of your best friends, he
24 was one of your intercircle?

25 A Correct.

1 Q You knew him, I guess, many years. When did you
2 meet him; '05, '04?

3 A You know, I don't remember. As I sit here today
4 it seems like he was always part of my life back at that
5 point in time. We were best friends.

6 Q You started doing deals with him, money deals
7 based on Internet, based on e-mails?

8 A Yes.

9 Q And then you borrowed money from him also
10 legitimately. Didn't he loan you money to buy Ricky
11 Williams' house?

12 A Yes. When I purchased that house Ted and his
13 father loaned me the money to do it. We did a standard
14 set of mortgage documents and gave him a mortgage on some
15 other property I owned on the same street and he loaned
16 me the money.

17 Q You didn't have those kind of documents to
18 support the other deals you were doing with Ted before
19 that; did you?

20 A No, there was a drastic difference between paper
21 - legitimate deals with Ted and paper and other deals
22 with Ted.

23 Q These are other deals with Ted. Did he know
24 they were illegitimate from the beginning, in your mind?

25 A From the very beginning? We discussed it after

1 we got started. I don't have a specific point in time in
2 mind. But yes, very, very quickly he knew that they were
3 not legitimate deals.

4 **Q And you established a man law account. Do you**
5 **know where that account was located and how it was --**

6 MR. MULLIN: I'm going to object. This is John
7 Mullin, Tripp Scott, we're Counsel for Ed and Carol
8 Morse and Morse Operations.

9 You made a big point, Mr. Scherer, of pointing
10 out the particular lawsuits that are pending and have
11 been part of the protocol, which you have gotten
12 permission to go forward. There's no pending case
13 against the Morses. They are not listed in your 2100
14 page Complaint and the entire line of questioning
15 about the Morses does not relate to a case in which
16 you have been Court permission to ask questions
17 today.

18 We object to it. I want a standing objection.
19 And we're going to move to strike any of this
20 testimony from the use at any future cases you may
21 bring that is not yet of record and not given
22 permission.

23 MR. SCHERER: Thank you. You reminded me. May
24 I have the Composite Exhibit of the Morse documents
25 that Mr. Morse filed as a part of these proceedings?

1 We're going to give that -- we're going to make this
2 a composite Exhibit Number 3.

3 MR. KOPAS: Composite Exhibit No. 3 are all the
4 documents that the Morse team filed in anticipation
5 of this deposition. They were labeled as Exhibit 5.

6 (Whereupon, Plaintiff's Exhibit No. 3 was marked
7 for identification.)

8 BY MR. SCHERER:

9 Q Would you take that and hand to to
10 Mr. Rothstein?

11 What I would like you to do, sir, obviously I
12 don't want you to read all that. Look through it and I'm
13 going to ask you a couple questions as to what's in those
14 documents. We're going to get into some of those in a
15 little more detail. I'll withdraw the man law for now,
16 then I'll do the man law in a minute.

17 Does it appear to be those are communications,
18 e-mails between you and the Morse family and Ted Morse
19 and copies of letters and then maybe Court pleadings on
20 cases including, primarily, Jan Jones that you handled
21 for them?

22 A Yes.

23 Q And you can see there's e-mails back and forth
24 relative to that case; correct?

25 A That's correct.

1 Q Again, I'm not going to have you read the whole
2 thing. I put that in as a composite because those were,
3 again, for the record, that's the documents that Morse
4 provided in their electronic filing to support their
5 deposition of you, which is going to take place on - I
6 don't know, Wednesday or Thursday.

7 MR. MULLIN: Let me state for the record the
8 documents that we distributed by the Court deadline,
9 unlike some people, were related to a Court
10 proceeding because we have a separate action that is
11 one of the cases where we've been given Court
12 permission to be here to question the witness on.

13 To the extent that there are Morse documents
14 that are here that doesn't mean we are in anyway
15 waive any objections we have as to using other
16 documents that were circulated including documents
17 that were circulated on time.

18 BY MR. SCHERER:

19 Q Thank you. Okay.

20 Thanks. Now, I'm going to ask again what was
21 the man law account?

22 A The man law account was an account - I believe I
23 had one and Ted had one. They were accounts that we
24 placed funds in for the purpose of paying for our extra
25 curricular activities with escorts.

1 Q The funds that went into those accounts, were
2 those -- where did those funds come from?

3 A They were Ponzi funds.

4 Q You had a man law account and he had one or did
5 you share the account?

6 A We had a shared account, but he also had an
7 account that we called the man law account which was - he
8 had a separate account within Morse Operations to hide it
9 from his wife.

10 As far as I know, the way he accessed that was
11 he would tell the CFO, Dennis McGinnis to take a portion
12 of the money that I was sending, for example, back to
13 Morse Operations and they would split it amongst the
14 investors; part might go to Morse Operations, part might
15 go to Ted Patti and part would go into his quote, unquote
16 man law account, the account he used to support his
17 mistresses.

18 Q When you had the account jointly, what bank was
19 that account in; do you recall?

20 A I don't recall. I don't recall. As a matter of
21 fact, specifically I don't even recall having the joint
22 account. I think the joint account may have been one of
23 the law firm accounts that we pulled money out of. The
24 account sticks out most in my head - I was drawing all
25 kinds of money out of our firm and out of every account.

1 But the one that we talked about more often than not was
2 the account that Ted had at - actually at Morse
3 Operations.

4 Q We're going to have some evidence of on that in
5 a minute. Who was Patti Morse?

6 A Patti Morse is Ted's wife.

7 Q And Ed Morse is?

8 A Ted's father.

9 Q Carol is?

10 A Ed Morse's wife.

11 Q And Morse Operations or MOI?

12 A The parent company - that is the company that
13 oversees all the business of all the Morse car
14 dealerships and other entities.

15 Q Now, let me show you we've got a Number 4. We
16 have a demonstrative prepared here that I want to show
17 you to see if this is an accurate portrayal of the
18 relationship that you --

19 MR. MULLIN: We object. It's untimely and
20 improper and it doesn't relate to a case in which you
21 have permission of the Court to question this
22 witness. Move to strike all the questions and
23 answers. And object to circulating the exhibits.

24 MR. SCHERER: Thank you, Counsel. You've made
25 that objection and it's noted. I don't think you

1 need to make it every time. Go ahead.

2 MR. KOPAS: Exhibit 4 is a demonstrative titled
3 Morse Triangle.

4 (Plaintiff's Exhibit No. 4 was marked for
5 identification.)

6 BY MR. SCHERER:

7 Q Now, take a look at this little graphic we
8 prepared here. I want to see if this accurately
9 portrays the business that you were doing with the Morse
10 family and you've got -- see Ted over there with the
11 fictional deals that you --

12 I'll ask you. You funded fictional deals for
13 Ted Morse and Patti that were Ponzi deals primarily by -
14 started by e-mails, no other documentation?

15 A 99 percent of the deals that I did with Ted
16 were e-mail deals.

17 Q Right.

18 A The only time that paper came up was when his
19 father asked for paper. And there was a period of
20 time - the middle or towards the end of one of their
21 audits, I believe Crowe Chizek was doing - they did
22 all the financials as part of the banking requirements.
23 And the auditors seeing all of this money flowing back
24 and forth between Ted and Patti, Morse Operations, Ed
25 and my firm - I suspect, based upon what Ted told me,

1 raised a lot of questions.

2 And so, we actually put together -- we created
3 two old deal packets. They were dated fairly close to
4 each other, within weeks of each other to substantiate
5 two of the deals so Crowe Chizek would leave them alone.

6 Q We'll show you these documents and organize that
7 thought on a global basis your dealings had deals from
8 Ted funded and then you had deals from Morse Operations
9 that were funded that were Ponzi deals, settlements if
10 you will, punitive settlements; correct?

11 A Yes. There were deals between Ted and my firm,
12 Ted and Patti and my firm, Morse Operations and my firm.

13 Q And then in addition there was a lawsuit that
14 you used in order to -- called the Jan Jones-Mizner
15 litigation in Palm Beach?

16 A Yes. If you look through our financials at a
17 period of time, several periods of time actually, where
18 the Ponzi was very close to imploding, we utilized the
19 Jan Jones litigation for the purpose of extracting false
20 bond money out of Ed Morse to fund the Ponzi scheme.

21 Q And who is the "we"?

22 A The we at that point in time - it was really me
23 and to a very minimal extent Steve Osper. I don't
24 believe Mr. Rosenfeldt or Mr. Adler or Mr. Lippman had
25 any knowledge of the Jan Jones fraud.

1 **Q Do you think Mr. Osper did?**

2 **A There is an e-mail from me to Pam Donavesis, Pam**
3 **is Osper's secretary. The e-mail asks Pam to draft an**
4 **Order in that case. That e-mail was ultimately reviewed**
5 **by Mr. Osper. There was no Order, no hearing. Mr. Osper**
6 **and Pam both knew it. So, to that extent - and if you**
7 **view the e-mails -- is it my perception that Mr. Osper**
8 **had knowledge of what was going on? Yes. Did I discuss**
9 **it with him directly? No.**

10 **Q We're going to touch on that in a minute. We're**
11 **going to get into that in a minute.**

12 **Let me show you what our next exhibit and it's**
13 **the first deal.**

14 **A Before I forget, on that line, Mr. Osper did**
15 **know that Ted was assisting us in getting money out of**
16 **Morse Operations to pay certain things that needed to be**
17 **paid in the Jan Jones case.**

18 **Ted was vouching for us with his father, and**
19 **Osper did know that. And he did know that because I told**
20 **him.**

21 **Q You told Osper that you were -- Tell me what you**
22 **told him.**

23 **A What was going on was, there was a lot of**
24 **pressure from Carol Morse more than anything, which she**
25 **was very suspicious, obviously 20/20 rightfully so. She**

1 was very suspicious of everything. She paid very close
2 attention to everything. And she was putting a lot of
3 pressure on us to get documents and things, to get her
4 details, things that we didn't have that would need to be
5 created.

6 We were telling them at one point in time that
7 we won cases that we didn't win. Steve knew that. That
8 is a fact that is substantiated by e-mail. Mr. Osper
9 knew we were representing to the Morses that cases we
10 lost had ultimately been actually settled by us with Ted
11 Morse's knowledge.

12 **Q Now, I'm going to get to that. I want to kind**
13 **of take it a step at a time here. This is February 16,**
14 **which I think is the first deal.**

15 MR. KOPAS: Plaintiff's Exhibit 5 is a February
16 16, 2006 e-mail.

17 (Whereupon, Plaintiff's Exhibit No. 5 was marked
18 for identification.)

19 THE DEPONENT: Just so we're clear with this
20 exhibit, where it says this fictional deals funded by
21 Morse Ops, I do not by any stretch of the imagination
22 believe that Ed Morse, Senior knew any idea what was
23 going on at any level.

24 BY MR. SCHERER:

25 **Q Do you know towards the end -- Let me save that**

1 question.

2 A Sure.

3 Q I'll examine you on that in a few minutes after
4 we go through some more documents.

5 A Yes. I think through Carol, he did get
6 suspicious. I think they called me Bernie Madoff once.

7 MS. ROTHCHILD: What is the exhibit that you
8 just handed --

9 MR. KOPAS: February 16, 2006 e-mail. Subject,
10 my favorite subject after pussy, smiley face.

11 MS. ROTHCHILD: Is there a Bates number?

12 MR. KOPAS: Rothstein S000043.

13 BY MR. SCHERER:

14 Q I give you this because I believe this to be
15 your first deal. Deal is on, 400 K, 200 K each, two
16 points, 20 percent, return in 10 weeks guaranteed by
17 secured funds.

18 A Yes.

19 Q Let me ask, what was the reference to 200 each?
20 What does each mean?

21 A At that point in time Ted believed that I was
22 investing along with him.

23 Q Into this deal, whatever the deal was?

24 A Yes.

25 Q We don't find any more paper other than the wire

1 into you and the payments back from you to him?

2 A Right. And you won't.

3 Q Do you know how many deals you with did with Ted
4 and Patti? Does 15 sounds correct? We're going to look
5 at that in a minute. Does that sound right?

6 A It could be. I really don't have an independent
7 recollection.

8 Q Same question about Morse Operations, our
9 records show about 17 deals - it shows 17 deals?

10 A If that's what it shows I'm sure it's correct.
11 I don't have an independent recollection.

12 Q I'm going to give you another composite
13 exhibit. And what is the number?

14 MR. KOPAS: Plaintiff's Exhibit 6 is a composite
15 exhibit of e-mails, Bates numbered Rothstein S000044,
16 through 000081.

17 MR. MULLIN: Same objection.

18 (Whereupon, Plaintiff's Exhibit No. 6 was marked
19 for identification.)

20 BY MR. SCHERER:

21 Q I'd like you to take a look at those. I think
22 those represent the sum and substance of the e-mail
23 initiation of these deals with Mr. Morse. And again, I
24 don't need you to read each of those because I am going
25 to summarize them in a minute.

1 Look them over and see if you don't recognize
2 those or see if you do recognize those.

3 A Oh, no, I recognize them.

4 Q All right. And so, this would be the way that
5 the transactions initially started with Ted and Morse
6 Operations before you started papering them a little
7 differently than an e-mail with a wire in and money paid
8 back?

9 A Yes.

10 Q Now, I'm noticing that you used interesting
11 colorful language in your e-mails to your various people
12 you were involved with?

13 A Yes, I was known to be colorful.

14 Q Colorful, that's a good word for it. When you
15 were dealing with innocent investors, did you use the
16 same kind of colorful language or how did you know when
17 to be colorful and when not throughout here?

18 A Sometimes I didn't know. Sometimes I just
19 didn't. I tend to be a little, bombastic. With Ted I
20 knew I -- look, Ted and I -- we were like brothers. We
21 shared everything from money to women and everything else
22 in between.

23 There was nothing that I couldn't say to him in
24 the context of our friendship and business dealings.
25 You'll find that my more colorful e-mails were to

1 people -- you could pretty much gauge it and tell almost
2 their level of knowledge, the level of whether they cared
3 or didn't care about what was going on based upon the
4 e-mails sent. If I had someone that was a disbeliever,
5 heavy scrutiny person, the e-mail was more professional.

6 Although at the point you'll see also e-mails
7 even with those people where they were -- if they were
8 pushing back, it wasn't as colorful, but I certainly
9 wasn't above using extreme vulgarity to get my point
10 across about how upset I was if an investor was
11 questioning me.

12 Q Words like dog and bro and --

13 A That's --

14 Q Banker and pimp and userious one and enjoy your
15 ill-gotten bootie was made to people you thought were
16 players more on the inside?

17 A Yes.

18 Q I mean, I don't think you would send Mr. Von
19 Allmen a ill-gotten bootie e-mail?

20 A No.

21 Q We see throughout this that you sometimes say
22 T.P.O.F.D. We have a bet in my office about what that
23 means.

24 A I need money in my commissary, you want to put
25 me in?

1 Q No. I'm going to have a hard enough time.
2 Prince of Darkness.

3 A You left out the F word, but yes. It was
4 actually a name given to me when I was at Gunther and
5 Whitaker. It stuck.

6 Q I notice in those e-mail deals with Ted Morse
7 and Patti and Morse Operations that they may have started
8 out as like some kind of deals or loans that you were
9 going to make with somebody and then it turned into
10 settlements.

11 A Yes.

12 Q Where you actually say I settled the case I have
13 money in-house?

14 A Yes.

15 Q That little settlement evolve so at some point
16 you even used two -- actually you used four structured
17 settlement deals or structured deals that morphed into
18 two sets of documents. Do you remember that? I'm going
19 to show you that in a minute. Does that ring a bell?

20 A I have a vague recollection. Again, to my
21 recollection, Mr. Scherer, the only time we actually used
22 deal paperwork was when it was required; a lower level of
23 paperwork for Ted to get Ed's approval and a higher level
24 of paperwork for Ted and the folks at Morse to appease
25 their auditors. Other than that it was just all of this.

1 Q Let me show you a June 26, '06 e-mail. I would
2 like you to take a look at.

3 A Is that in this packet or another one?

4 Q I'm going to bring them over. You can put that
5 packet aside. We're going to ask you questions from --

6 MR. KOPAS: Plaintiff's Exhibit 7 is a 2/26, '06
7 e-mail. Bates Rothstein S000082?

8 A Thank you.

9 (Whereupon, Plaintiff's Exhibit No. 7 was marked
10 for identification.)

11 BY MR. SCHERER:

12 Q See, I kind of have that highlighted so we could
13 more quickly refer to it. Subject: Mo money?

14 A Yes.

15 Q And the terms of the deal were 150 K each, that
16 would be him and then him thinking you had a piece of
17 that also; right?

18 A Yes.

19 Q In. And \$175,000 each out in 30 days. Nice.
20 Fast?

21 A Um-hmm.

22 Q Then you got something up here, we can do it
23 with Patti or man law?

24 A Yeah.

25 Q However you want?

1 A Um-hmm.

2 Q See that?

3 A Yes.

4 Q And then I want to show you how that deal got
5 paid off and --

6 MR. KOPAS: Exhibit 8 is August 29, 2006 e-mail,
7 Bates Rothstein S000083 to 84.

8 (Whereupon, Plaintiff's Exhibit No. 8 was marked
9 for identification.)

10 BY MR. SCHERER:

11 Q Take a look at that and on the second page I
12 have it highlighted there. It appears to start out at
13 the bottom where you can see Patti sending you an e-mail
14 updating the ledger. Do you see that?

15 A Yes.

16 Q Down at the bottom, on August 28?

17 A Yes.

18 Q And she's got various loans and she's got it -
19 on the back page it's got - second page, it has loan
20 number seven. Do you see that?

21 A Yes, I do.

22 Q This has been held since 6/27/06, we still don't
23 know what's happening with it and what's the PI and how
24 long is the loan for. Can we find this out or get it
25 back. You see that?

1 A I do.

2 Q You see your response to her is loan for 12
3 months and then you recast the deal. You see that?

4 A Yes.

5 Q So, you took this 30 day loan that we referred
6 to in Exhibit Number 7 that was supposed to be 175,000
7 out in 30 days and you recast it to make it a year deal
8 with \$10,500 a month?

9 A Yes.

10 Q See that?

11 A Um-hmm.

12 Q I think that adds up to \$128,000, so it didn't
13 quite match the terms; you're a year late and a few
14 dollars short.

15 A And we're sure it's the same deal?

16 Q Yeah, it's the same deal.

17 A Okay. I remember changing more than one deal.
18 I don't remember whether this is that deal. So, what is
19 your question with regard to this?

20 Q In terms of what did Ted say when you took your
21 30 day deal that you had on that e-mail and made it a
22 year deal and recast the terms?

23 A Ted couldn't have cared less. Patti cared. Ted
24 was making a fortune with me. The joke around his family
25 and our friends was that I was his most profitable car

1 dealership. He couldn't have cared less.

2 Q So --

3 A But what ended up happening - to cut to the
4 chase with this - ultimately Patti is asking me a bunch
5 of questions and it happened several times, more than
6 several times, on some of these deals. She would ask
7 questions, before I ever answered her, I always would
8 pick up the phone and call Ted and say hey, what do you
9 want me to tell Patti? Sometimes he would say tell her
10 whatever you want to tell her, sometimes he would say let
11 me handle it. He would call and scream at her and it
12 would stop and then start again.

13 Q We've gone over all of the 15 deals and it looks
14 like on some of them you underpaid, some of them you
15 overpaid, but I don't find any inquiry or any question
16 from Ted back to you to say here's what our deal was.

17 A You can generally tell -- this doesn't go just
18 for the Morse deal, but it goes for all the people
19 involved, one of the indicators that you can utilize is
20 their depth of inquiry and their pitching a fit when a
21 payment doesn't come.

22 If this was a real deal and there was really
23 money in a trust account someplace, holding the money,
24 you would think that the payments would be made on time
25 all the time, not that they would be reshuffled.

1 Q Let me show you what we have as a discrepancy
2 schedule that I would like you to see.

3 A Discrepancies?

4 MR. KOPAS: Plaintiff's Exhibit 9 is a
5 discrepancy schedule.

6 MS. ROTHCHILD: Bates number?

7 MR. SCHERER: There's no Bates number. It was
8 produced -- it's actually for demonstrative
9 purposes. It wouldn't have a Bates number on it.

10 MS. ROTHCHILD: When was it produced?

11 MR. SCHERER: In those documents that you got
12 this morning.

13 MR. MULLIN: Same objection.

14 (Plaintiff's Exhibit No. 9 was marked for
15 identification.)

16 BY MR. SCHERER:

17 Q I would like you to look at the schedule and
18 see if this refreshes your recollection. Looks like the
19 eight the 15 deals - you can see the original terms of
20 the deal and the actual payments on eight of the 15
21 didn't match the original terms of the deal?

22 A That's correct.

23 Q It looked like six of them were in favor of the
24 Morse and two of them were in your favor on that. I
25 think Mr. Morse netted out about 250,000 more - assuming

1 my math is correct, was there any accounting between the
2 two of you as to, he's ahead by 250, or you're ahead by
3 250?

4 A No.

5 Q Why not?

6 A Didn't need it. We were both making a lot of
7 money.

8 Q There seems to be a switch in '08 from the deals
9 funded by Ted and Patti to the Morse Operations. You
10 started to talk about the switch. Was that in part
11 because of Patti's inquiries or to avoid Patti's
12 inquiries?

13 A It was several fold: It was avoiding Patti's
14 inquiries and also Ted's interest in investing more and
15 more.

16 Q Needed to get the money out of the company to --

17 A Instead of using the funds from his and Patti's
18 private account, he wanted to use money from the company
19 to invest at a higher level.

20 Q Who did the accounting for the first deals that
21 we've just been over; the Ted and Patti deals? Did they
22 do them or was the accounting done --

23 A Patti did pretty much all of it. We kept track
24 of it in-house. At that time back in 2006 it was
25 actually probably a combination of Debra Villegas an

1 Irene Stay, back then Irene Shannon.

2 Q After the deals you started doing the 17 deals
3 with Morse Operations, I presume their accounting
4 department --

5 A Dennis McGinnis kept track of that along with a
6 gentleman named Michael Kelly who was, I believe,
7 comptroller or something to that effect.

8 Q Do you have any belief that they became in on
9 the Ponzi nature - or the illegal nature of your
10 activities during any of this time?

11 A Mr. McGinnis and Mr. Kelly?

12 Q Yes.

13 A I have no reason to believe that.

14 Q Some point in time they did some back-dating of
15 promissory notes to cover deals that were --

16 A Yes.

17 Q -- Morse Operation deals where the e-mail that
18 generated the deal said money in-house, just settled
19 another case?

20 A Um-hmm.

21 Q And then a year later you back-date it or
22 somebody back-dated promissory notes and turned the deal
23 in-house to a promissory note. Do you recall that?

24 A Yes. When they requested documentation for
25 their auditors we created the documents necessary at

1 Ted's request. And the request of Mr. McGinnis and/or
2 Mr. Kelly.

3 Q Mr. McGinnis knew that they were back dating
4 promissory notes that didn't match to cover the deals --

5 A I can't tell you for certain whether he knew
6 they were back-dated. The only person that I'm certain
7 knew they were back-dated was Ted. We would have had
8 discussions. I can picture the discussion, what do you
9 mean, what the hell are you talking about? I don't have
10 any documents.

11 I need documents. All right. I'll get you
12 documents. It wasn't very complicated from that
13 standpoint.

14 Q Let me show you an example of the deal that got
15 papered with a Promissory Note. I have an e-mail, June
16 25, '08. I would like you to take a look at it.

17 MR. KOPAS: Plaintiff's Exhibit 10 is going to
18 be a June 25, '08 e-mail, Bates stamped Rothstein
19 S000085. I'm also going to give him Exhibit 11,
20 which is a Promissory Note on that deal, Bates
21 Rothstein S000086.

22 MS. ROTHCHILD: Are these part of the production
23 this morning?

24 MR. KOPAS: Yes.

25 MS. ROTHCHILD: Same objection.

1 MR. MULLIN: Join.

2 (Whereupon, Plaintiff's Exhibit Nos. 10 and 11
3 were marked for identification.)

4 BY MR. SCHERER:

5 Q Do you see that starts out: Money, and I do
6 mean moo?

7 A Yes.

8 Q In the end you say hey, bro, very simple deal,
9 fund three million, ROI, 500 K, pay back in 90 days.

10 A Okay.

11 Q Secured by funds already in-house?

12 A Yes.

13 Q And this was a Morse Operations deal?

14 A Yes.

15 Q And then you'll see on the next exhibit, the
16 Promissory Note, it was prepared in May of '09, almost a
17 year later and back-dated. Do you recall that?

18 A I don't recall the specific Promissory Note, but
19 I do recall back-dating documents for Mr. Morse's use
20 with auditors and his accounting department.

21 Q In the prior e-mail secured by funds in-house,
22 that's a Ponzi settlement; right?

23 A Yes, that's a lie.

24 Q Yeah, I understand it's a lie. But I mean, that
25 was -- those were Ponzi that you would use throughout to

1 **say I have another settlement?**

2 A That's right. It's a reference to the type of
3 deal it was.

4 Q So that if there was money already in-house to
5 support the deal, why would they do an unsecured
6 Promissory Note rather than have the funds that were
7 already in-house?

8 A When they first started to need documentation,
9 Mr. Scherer, there was a discussion between Ted and I -
10 because he didn't even know what type of documentation he
11 needed. He said McGinnis is saying our people at Crowe
12 Chizek, need documents. Okay. Barking up our ass, so to
13 speak. Okay.

14 I said, you got to tell me what the heck you
15 need. You know, I can give you a Promissory Note, I can
16 give you more documents, let's keep it as simple as
17 possible. I guess he spoke to somebody, I don't know
18 whom, I would suspect it would be Mr. McGinnis or
19 Mr. Kelly and they decided a Promissory Note would be
20 sufficient, so I prepared a Promissory Note.

21 Q Let me show you a schedule -- I mean, a
22 demonstrative schedule that I prepared that's of an
23 e-mail from Morse Operations to you. It's Page 18.

24 MR. KOPAS: Plaintiff's Exhibit 12 is a
25 demonstrative exhibit concerning missing promissory

1 notes.

2 MS. ROTHCHILD: Can you identify it?

3 Mr. Scherer, would you identify for us trying to
4 follow along so we can go through this packet?

5 MR. SCHERER: Page 18.

6 MR. KOPAS: Page 18 of the power point
7 provided.

8 MS. ROTHCHILD: Separated out?

9 MR. SCHERER: It's at the end of it.

10 MS. ROTHCHILD: Same objection.

11 (Whereupon, Plaintiff's Exhibit No. 12 was
12 marked for identification.)

13 BY MR. SCHERER:

14 Q So, do you recall receiving a schedule from
15 Morse Operations in terms of the deals that needed to
16 have promissory notes that look something like this?

17 A I have a recollection of receiving things that
18 look like this. I don't have an independent recollection
19 of receiving this document.

20 Q Tell us your recollection of how Morse
21 Operations communicated to you concerning the need for
22 these notes. You said it already but I would like --

23 A The bulk was Ted calling me. He would call me.
24 Again, Ted and I were best friends. Pick up the phone,
25 our conversations were generally extremely vulgar. I'll

1 leave them out.

2 He would tell me, we need documentation. I
3 said, what documentation do you need? I don't know what
4 to give you, I can give you a Promissory Note, I can give
5 you a settlement agreement, I can give you assignments.
6 Basically giving him the variety of documents that we had
7 available in our standard deal packets. We both agreed,
8 let's keep it as simple as possible. He said he would
9 get back to me. This occurred on more than one
10 occasion.

11 I don't know who he spoke to, I can only assume
12 it was someone at Crowe Chizek, more likely Mr. McGinnis
13 or Mr. Kelly or both of them.

14 **Q Did you have communications with McGinnis or**
15 **Kelly or anybody else either by e-mail or directly**
16 **concerning the need to paper these transactions?**

17 A I believe I did. I know I had telephonic
18 communications. Dennis McGinnis and I go way back, we
19 were fraternity brothers at the University of Florida. I
20 was extremely comfortable with him.

21 The other thing you have to understand the
22 dynamic of - it's called Ted's management style, when it
23 comes to being abrasive, when he wants something, Ted
24 makes me look like a puppy, so people were very, very
25 reluctant. You can speak to anybody that works for the

1 Morse companies can tell you, he's a yeller and a
2 screamer and a curser. It was very simple
3 conversations. I would talk to McGinnis and say, Ted's
4 all over me about this, tell me what the heck you want.
5 And McGinnis might say something like, I know he's been
6 in here screaming like a lunatic. What can you give me?
7 I'll give you a Promissory Note; does that work. Yes.
8 End of conversation.

9 And it's internally - I can't speak for the
10 auditors because I don't know, but internally if the
11 people inside were pushing for something - if Ted said
12 this is what you're getting, make it work, that's the way
13 it would happen.

14 **Q Do you have any recollection of having dialogue**
15 **with anybody, McGinnis or anybody in Morse Operations**
16 **about that the deal was a settlement where the funds were**
17 **in-house and where are the funds that were in-house?**

18 A Where they asked me were the funds in-house?

19 **Q Yes.**

20 A I don't have an independent recollection of it
21 but it certainly wouldn't surprise me if Dennis McGinnis
22 or Mike Kelly asked me that question.

23 **Q The idea of doing a Promissory Note unsecured by**
24 **the law firm to secure three million dollars that was**
25 **supposed to be in-house in your trust account, seems to**

1 me that would be something that an accountant might want
2 to talk to you about.

3 A I can tell you -- yeah, but they didn't raise it
4 that way. In other words, if you're asking me did
5 Mr. McGinnis or Mr. Kelly or anyone else from Morse for
6 that matter, accepting Carol out on all the Jan Jones
7 stuff -- nobody, no one from Morse Operations ever asked
8 me any in depth conversation - questions, excuse me,
9 never asked me any in depth question about anything that
10 I was doing with Ted.

11 As best as I can could tell, I think the
12 conversations would prove it up, I was off limits.
13 Whatever I was doing was okay by Ted and that was that.

14 Q Did you have a problem with Bank of America; you
15 and Mr. Caputi --

16 A Yes.

17 Q -- have a problem with Bank America that you
18 asked Ted to help you with?

19 A Yeah, we had a huge problem.

20 Q It was as a result of some check kiting issue in
21 June of '06?

22 A Yes, prior to my purchase of Kendall Sports Bar,
23 which was the company that owned Cafe Iguana in Pembroke
24 Pines. Steve Caputi was the manager running the finances
25 for the absentee owners. I believe he was actually a

1 five or 10 percent owner, if I'm not mistaken as well.
2 We ran a fairly large check kiting scheme, again, for me
3 to supplement deficiencies in the law firm and out of my
4 own pocket and the pockets of my partners, in and out of
5 what is Kendall Sports Bar, which is Cafe Iguana. It was
6 an extended period of time.

7 At one point in time or several points in time
8 checks got deposited when they shouldn't have got
9 deposited. We miscalculated the float and checks
10 bounced.

11 There were some very, what I'll term -- the best
12 I could tell you would be frightening calls that
13 Mr. Caputi received from the people at Bank of America.
14 When it was relayed to me it was clear to me SAR,
15 Suspicious Activity Report was about to be filed or had
16 been filed and I was going to do everything in my power
17 to stop it.

18 I certainly didn't want the federal government
19 looking at what we were doing. I contacted Ted. I
20 explained the situation in detail to him. He had a very
21 tight relationship with the people at Bank of America all
22 the way up the ladder because the fact that his family
23 they floor planned their cars through Bank of America and
24 had personal money there at one point in time.

25 And he made calls to attempt the stop the SAR

1 from leaving the bank.

2 Q How do you know that? How do you know Ted did
3 that?

4 A He told me he did.

5 Q I'm going to show you an e-mail.

6 A As a matter of fact, I remember him actually
7 telling me he had already contacted someone at the bank
8 and was waiting to hear back.

9 Q Did the problem go away?

10 A It never became a problem for us so I assume it
11 went away.

12 Q What did you tell -- Did you tell him of the
13 importance of the mission to get the bank to back off?

14 A My recollection is that this would be the
15 downfall of my law firm if this occurred.

16 Q And you related that way to him?

17 A Probably in more colorful language, but yes.

18 MR. KOPAS: Plaintiff's Exhibit 13 are the
19 Caputi e-mails, Bates labeled Rothstein S000092,
20 000096.

21 (Plaintiff's Exhibit No. 13 was marked for
22 identification.)

23 BY MR. SCHERER:

24 Q Let me show you these series of e-mails as a
25 composite. You don't need to read them all. I kind of

1 over highlighted that first one, but it's an e-mail from
2 you to MOI1 at Ed Morse. That's Ted --

3 A That's Ted's personal e-mail, yes.

4 Q Right. And you can see on the second one,
5 you're continuing to ask him, and then on the Page 91
6 that ends with 94 where you're talking about a deal on
7 that e-mail. You can see down at the bottom where he
8 says, I'm on both deals. And then he said I also talked
9 to BOA, we will know more tomorrow. Do you see that?

10 A Yes.

11 Q And your recollection is in addition to this
12 e-mail you spoke with him after and he said what you said
13 he said?

14 A Yes. He told me that he took care of it.

15 Q Mr. Rothstein, they're telling me that we need a
16 break so we don't want to wear you out.

17 THE DEPONENT: Okay.

18 MR. SCHERER: 10 minutes.

19 (Thereupon, a short break was taken.)

20 BY MR. SCHERER:

21 Q We're going to try to hurry this along a little
22 more, Mr. Rothstein. Hard for me to say that.

23 Let's go. Next exhibit is Exhibit 14, which is
24 a summary chart that I would like to show you now.

25 MR. KOPAS: Plaintiff's Exhibit 14 is Page 9 of

1 the power point presentation.

2 (Plaintiff's Exhibit No. 14 was marked for
3 identification.)

4 BY MR. SCHERER:

5 Q I want you to kind of keep that in front of you
6 while we examine - or while I examine you on some more of
7 these facts. I want to direct your attention to the Jan
8 Jones lawsuit. And I understand there was a lawsuit
9 filed up in Palm Beach County against a decorator, Jan
10 Jones and a contractor that built a house for Ed and
11 Carol?

12 A Correct.

13 Q And look at the schedule there before you, you
14 can see that I've got a schedule of all of the money that
15 was paid, the totals there - the deals, looks like you
16 have the Ted Morse deals, the Morse Operations deals and
17 the Jan Jones deals.

18 A Okay.

19 Q I represent that I believe that schedule is
20 pretty accurate, the accounting totaling up to - we don't
21 do the totals on the schedule, it's about - a little shy
22 of a hundred million dollars total.

23 A That sounds approximately correct.

24 Q We've talked about the Morse Operation deals and
25 the notes, and we've talked about Ted and Ted's deals.

1 And now let's go to Jan Jones. It looks like that - not
 2 looks like -- when was the first time you used the Jan
 3 Jones lawsuit -- Well, let me ask you this. First of
 4 all, the Jan Jones lawsuit against the decorator and
 5 contractor for building shotty construction; what kind
 6 of -- how much is at issue in that lawsuit?

7 A I don't recollect.

8 Q It wasn't but a million dollars at issue, plus
 9 or minus?

10 A Yeah, it was probably somewhere between a
 11 million plus. Carol believed it was substantially more
 12 but yes, there was - probably on its best day, a few
 13 million dollars involved.

14 Q For them?

15 A For them.

16 Q On its worse day, didn't you pay 500,000 to
 17 settle it, to get it out from underneath you?

18 A Yes.

19 Q Somewhere in that range?

20 A Somewhere between them paying 500,000 and us
 21 getting some money?

22 Q Yes.

23 A Range in a million, two million dollars, yes.

24 Q How did it come about that you - starting in
 25 July of '06, started getting money out for these payments

1 that you see there as represented as 650,000, 600,000,
2 one million four, et cetera?

3 A We told Ed and Carol -- when I say we, I told Ed
4 and Carol -- this was me doing this.

5 Q Okay.

6 A That there were bonds due. We need money for
7 the Ponzi scheme obviously.

8 Q Okay.

9 A I had no other place to get it. I went to the
10 place I knew that I could likely get it. And I explained
11 to them, with a lie obviously, that we needed to post
12 these bonds in order to secure different things. Certain
13 of these for bonds, certain for expert witnesses, other
14 things, it was one lie after the other.

15 Q In looking at the -- there weren't any court
16 orders all the way down through the red dotted line there
17 in March of '08, as I understand it?

18 A No court orders until the pressure from Carol
19 got to the point where we needed to have one.

20 Q Now, was Ted involved in this knowing that this
21 bond money was not legitimate?

22 A At a certain point in time it became clear to
23 Ted that there were no real bonds.

24 Q The fact that there were no real bonds would be
25 supported by the fact that there were no documents in any

1 court file referencing any bonds or seizures of money?

2 A Right. By that and by the fact that at the very
3 end there was a phony hearing that allegedly had taken
4 place before Judge Seltzer.

5 Q We're going to talk about that in a minute.

6 And it appears that there was about eight
7 million dollars worth of these bonds prior to '09. And
8 then there was -- and then the activity really
9 increased. But I want to direct your attention to the
10 before part of that schedule.

11 What were you telling Ed and Carol or people in
12 Morse -- did you report to Morse Operations also?

13 A I reported to Ed and to Carol.

14 Q Not to anybody, McGinnis or anybody at the
15 company where the money was coming from?

16 A I may have had conversations with them, but I
17 did not report to them.

18 Q Can you tell us just briefly what you told them
19 that would require them to post eight million dollars in
20 a million dollar lawsuit?

21 A I don't remember off the top of my head, but
22 here's what you must understand to understand the size of
23 the figures.

24 As far as perpetrating all fraud, Carol was her
25 own worse enemy because she had such venom. Her attitude

1 was so venomous as pertains to Jan Jones and the people
2 working with him and the other people -- you have to
3 understand, they were building what was going to be their
4 dream, their final big home up in Boca Raton. It became
5 a disaster. And the venom level - you could have
6 convinced Carol at that point in time that this lawsuit
7 was worth a billion dollars. And she --

8 MS. DEUTCH: Roberta Deutch on behalf of Carol
9 Morse and I represent Ed and Carol Morse. To these
10 gratuitous comments, move to strike with no
11 foundation. Move to strike.

12 **Q Okay. Go ahead, Mr. Rothstein.**

13 A So, I played off of that. I mean, it was clear
14 to me that Carol believed this was worth a lot of money.
15 When I told her the value of these things and told Ed the
16 value of it, she was actually one of the best salespeople
17 for it because she had Ed convinced that this was worth
18 tens of millions of dollars.

19 MS. DEUTCH: Move to strike.

20 A When I asked for the bonds, there was really no
21 question. The questions were limited, then they sent the
22 money.

23 **Q You asked for the bonds - do you recall what you**
24 **told them the bonds were securing?**

25 A Some were to secure off-shore money we

1 identified in Jan Jones off-shore, I believe, it was a
2 Cayman account. Some was to secure a judgment that we
3 had, various things of that nature. There should be --
4 one thing about this, Mr. Scherer, with regard to Carol
5 and Ed, there should be e-mails. It's a lot different
6 than my communication with Ted Morse. Most of it should
7 be memorialized. The lies I was telling to support this
8 should be memorialized in e-mails.

9 **Q It is. When did Ted come into the picture in**
10 **terms of knowing that this was you getting big Ponzi**
11 **money or getting Ponzi money out of that Jan Jones**
12 **lawsuit?**

13 A The time that I have -- I'm only going to tell
14 you when I was certain. I had inklings about it before.
15 The time that I was certain was, this was exploding with
16 Carol. She was all over me. I was constantly, for
17 months, complaining to Ted, you need to get her off my
18 back, she's making me crazy, all this crazy shit, she's
19 going to sue me and do all kinds of things. It's going
20 to blow up everything we have together. This is a mess.

21 He kept telling me he would handle it, he
22 handled it as best he could for as long as he could. You
23 must understand, you don't have to take my word for it,
24 speak to anyone in the Morse family or anyone friends
25 with the Morses to say to Carol and Ted had a bad

1 relationship, again, one of the understatement of the
2 millennium. He had no love loss for her at all.

3 So, at some point in time it becomes clear to me
4 because I'm telling Ted this is going to blow up. He
5 said, what do we need to do? I said, we have to get
6 something for her to shut her up. And we planned out
7 this hearing that is going to occur.

8 Q I'm going to get to that. Before we get to that
9 hearing that was going to occur - and I know there's a --
10 you had is a phony Court Order before Judge Seltzer that
11 was Judge Marra that was entered -- I'm going to give you
12 that too in a minute.

13 A Okay.

14 Q Before I get there, did you have a
15 conversation -- Let me back up.

16 In April of '09 the New York Fund stopped
17 funding your Ponzi through Banyon. That's the date. It
18 was April and you got no more Monday payments from them.
19 I want you to accept that April 4th was the last one, I
20 think.

21 A Okay.

22 Q Okay.

23 A Um-hmm.

24 Q Never got anymore, and knew you weren't going to
25 get anymore. Frank Preve e-mailed you and said they're

1 history. You were just going to pay them enough to keep
2 them going?

3 A That sounds about right because it was Aril 13,
4 '09 when I cut them off.

5 Q Okay. Same period of time.

6 A Yes.

7 Q Did you have a conversation with Ted at that
8 point that you needed to get short-term money out to keep
9 the Ponzi going and you were going to ramp up the Jan
10 Jones lawsuit?

11 A I had several conversations with him about that.

12 Q Tell us about it.

13 A What was occurring was Ted could see the
14 pressure that I was under. Again, the man was my best
15 friend. Ted knew based upon my prior conversations with
16 him about everything else we were doing that what was
17 going on was illicit with regard to all the deals that he
18 was doing, that he was doing with me, hence no need for
19 the paperwork.

20 With regards to Jan Jones, the soft point with
21 Ted was that Ted believed all this time that his father's
22 money was ultimately going to be his money anyway. So it
23 was more of a, "Don't worry about it. Do what you've got
24 to do. We'll work it out at the end."

25 Even if you go through all the e-mails, right

1 down to the very end Ted sent me an e-mail saying, "I
2 don't care if you did something wrong. We can work it
3 out. Just tell me what's wrong."

4 Q Let me show you a graphic. At the time of this
5 conversation that you had with Ted -- I'm going to show
6 you a summary chart of how much money Ted had coming and
7 Morse Operations had coming from your Ponzi deals.

8 MR. KOPAS: Exhibit 15, Page 47 from the Power
9 Point.

10 (Whereupon, Plaintiff's Exhibit No. 15 was
11 marked for identification.)

12 BY MR. SCHERER:

13 Q I represent that I believe this chart is
14 accurate as far as the accounting goes. That he, Morse
15 operations, had \$13 million and then some outstanding on
16 your Ponzi deals at that point.

17 Was there a discussion when you talked to Ted
18 that, You've got a lot of money coming if we keep this
19 Ponzi going?

20 A It wasn't necessarily like that, Mr. Scherer.
21 It was the pressure on me. Okay. I mean, it was an
22 understanding with Ted that he had a lot of money
23 coming. Again, it was not necessarily every day
24 conversation, but certainly whenever the conversation
25 turned to money.

1 And I don't mean to be wordy about this, but you
2 need to understand the context to know what Morse knew
3 and didn't know, and it was very simple.

4 Ted knew that he had a lot of money coming. I
5 knew he had a lot of money coming. He did not care where
6 it was coming from, and he made that clear to me by
7 telling me, "Just do whatever you have to do. We'll work
8 it out all out in the end."

9 He used to joke around with me because I used to
10 get visibly upset with him about this. And he would say,
11 "Listen, listen, listen. At the end of this day it's all
12 my money anyway. It's all coming to me. Only a portion
13 of it goes to Carol. The business, most of my father's
14 money is coming to me. So don't worry. We'll get it
15 worked out."

16 He, it was very, very -- he tried to be very,
17 very brotherly and very calming toward me with regard to
18 the moneys and doing what we needed to do in order to
19 make sure everybody got their money back.

20 **Q As far as the bond monies that were tied up, do**
21 **you recall what you told Ted and ultimately Carol and Ed**
22 **about what they were going to get from the bond money**
23 **that was tied up in terms of interest rate?**

24 A It was a ridiculous interest rate. I think we
25 actually made interest payments on it, a \$500,000 payment

1 and something else.

2 Q Was there a 15 percent interest rate on the
3 bond? Does that sound right?

4 A It sounds right.

5 Q And so what they were going to get out of this
6 lawsuit was there's a phony judgment entered for
7 \$23 million?

8 A Correct.

9 Q And they had posted up to \$57 million in
10 bonds --

11 A Correct.

12 Q -- that they were going to get 15 percent on?

13 A Yes.

14 Q And so that their anticipation was the 57
15 million bonds being repaid back at 15 percent interest
16 plus a \$23 million judgment, 21 of it punitive, \$2
17 million of it compensatory, right?

18 A That's correct.

19 Q And then all of the Ponzi deals --

20 A That's correct.

21 Q -- which ultimately paid out?

22 A That's correct.

23 Q After the 57 million was the high watermark of
24 the bonds, you paid a lot of those bond funds back to the
25 Morses, didn't you?

1 A 25 million or so back.

2 Q 29, I believe.

3 A I don't recollect specifically, but I know it
4 was in the 25 million-plus range.

5 Q Were you trying it get Ted back his money when
6 the crash occurred?

7 A Before the crash occurred, yes.

8 Q Before the crash occurred?

9 A Yes.

10 Q At the end of the day if you had been able to
11 carry on this Ponzi scheme a little longer, if my math is
12 correct, Ted and Morse Operations and Ed and Carol would
13 have netted about \$38 million from dealing with you, in
14 addition to getting their money back, of course?

15 A That's correct.

16 Q Let me show you 49. I've got an e-mail where
17 you're -- where Ed Senior compares you to Bernie Madoff
18 on March 17, '09.

19 A Yes.

20 Q Things started to get serious then?

21 A They were already serious with Carol. But what
22 occurred was I received that e-mail, I believe -- What
23 day of the week is that?

24 Q It's Tuesday. We're going to get it as soon as
25 my assistant gets on the ball here.

1 A Okay.

2 Q We only went over this last night about five
3 times.

4 MR. KOPAS: Exhibit 16, page 49, from the Power
5 Point.

6 (Whereupon, Plaintiff's Exhibit No. 16 was
7 marked for identification.)

8 BY MR. SCHERER:

9 Q That's so you can recognize Bernie up there.

10 A I recognize him.

11 Q This is a blowup of that e-mail. And you're
12 writing him back. I guess you had a conversation when
13 they accused you of -- How did the accusation of the
14 Madoff come about; do you recall?

15 A Yes. I was talking to Ted. We were discussing
16 all the funds, what needed to be done. It was a fairly
17 intense conversation. He kept telling me, "You need to
18 do something to calmed Ed down." It was -- it was a
19 recurring theme that had boiled over. It was, "Carol has
20 gotten Ed in a twist. You need to do something to calm
21 him down. He's starting to think you're like Madoff."

22 Q I notice you say in there, you know, "I'm deeply
23 sorry." I've got that highlighted for you. "Putting
24 your company in deals that have made you feel so
25 uncomfortable."

1 And then you went on to say something about,
2 down at the bottom there you say -- Let me see if it's in
3 this e-mail. Somewhere in one of these e-mails you
4 mention to them that you had made them millions of
5 dollars in the settlements, and made some reference that
6 you -- Oh, yeah, in this one. You're meeting with George
7 about taking them out.

8 A Yes.

9 Q Tell us about that.

10 A I was basically telling them that if they wanted
11 out of everything, that I had someone that would take
12 them out.

13 Q But, you made reference to the fact that they
14 had made millions in profit on your settlement deals.

15 A Well, that was something that -- I can tell you
16 this, Ted Morse, I don't know what Ed's feeling was, but
17 Ted did not want out of anything.

18 Q Okay.

19 A He was trying to appease his father, and I was
20 attempting to appease his father.

21 If you look at this, this is the way I was
22 operating at that time. "I'm making you millions of
23 dollars. Why are you accusing me of something?"

24 Q Go ahead. "The next time" -- Why don't you just
25 go ahead and put this e-mail into the record while you've

1 got it.

2 MR. KOPAS: Exhibit 17 is the actual e-mail,
3 Bates labeled Rothstein S, 000097. I'm back on the
4 ball.

5 (Whereupon, Plaintiff's Exhibit No. 17 was
6 marked for identification.)

7 BY MR. SCHERER:

8 Q This is the actual e-mail, not my graphic there.

9 A Okay.

10 Q I couldn't get the picture off.

11 A Yes. Understand, first of all, any time I'm --
12 Ed Morse was very much like Ron Picou, who did not have a
13 computer. So anything I was sending to Ed I would simply
14 send to Dolores Daoust, who was Ed's primary assistant.

15 Q You drafted a fake order of Judge Marra dated
16 the 25th of March '09. Do you recall that?

17 A Yes.

18 Q And did you do that by yourself or did you have
19 some help in your firm to do that?

20 A The only thing that may have occurred, and I
21 don't have an independent recollection one way or the
22 other, is running the order by Steve, Steve Osper to make
23 sure it comported with what was going on with the case at
24 the time, but other than that it was all me.

25 Q The order goes on and on, but it essentially

1 says you found ten million dollars in the United States
2 in accounts that you seized, 20 million in the Caymans
3 and that there was a 23 million dollar judgment entered
4 in their favor and ordered that the money was going to --
5 the bond money was going to be paid back to them after a
6 time.

7 A Yes.

8 Q And you always had a down the road --

9 A It had to be down the road because I was hoping
10 that sufficient Ponzi funds came in from other investors
11 to pay them off.

12 Q By this time Ted knew that this money was going
13 into your illegal business?

14 A He knew it was being used for illicit activity.
15 Ted and I never had a conversation. So we're clear,
16 Mr. Scherer, Ted and I never had a conversation that
17 said, This a Ponzi scheme. I didn't have that
18 conversation with anybody.

19 Q Nobody used the word Ponzi; right?

20 A No.

21 Q There's Ponzi talk throughout your e-mails and
22 your correspondence and --

23 A There's conversations regarding illicit
24 activity, illegal activity, yes.

25 Q Now, let me show you an e-mail from Carol that

1 kind of got things moving along for you, September the
2 6th.

3 MR. KOPAS: Exhibit No. 18 is an e-mail from
4 September 6th, and it's actually produced by the
5 Morse as part of their Exhibit 5, pages 150 and 151.

6 (Whereupon, Plaintiff's Exhibit No. 18 was
7 marked for identification.)

8 BY MR. SCHERER:

9 Q Do you recall this?

10 A Yes.

11 Q And it appears that this -- Well, let me ask
12 this: There was a demand, as you can see there on the
13 e-mail on the 6th to you. She wants the following by
14 5:00 p.m. And all Court orders, et cetera, et cetera.

15 A Yes.

16 Q You think Carol drafted this?

17 A No.

18 Q You think she had a lawyer draft it for her?

19 A I had a suspicion for many months that Carol had
20 been talking to a lawyer.

21 Q You don't know who the lawyer was?

22 A I have no idea.

23 Q One of the things I wanted to ask you, the Morse
24 Operations, if we were to go run a litigation index of
25 them, that company is in litigation all the time and has

1 been for years and years in terms of its Cadillac
2 agencies?

3 A Sure. All its car dealerships. Sure, yeah.

4 Q Like any other car dealership.

5 A If you're asking me if they're litigation savvy,
6 the answer is yes.

7 Q Did it ever occur to you during this time that
8 they might call one of their lawyers in one of their car
9 cases and ask if this sounds legitimate, what you were
10 doing in terms of getting so much money out in terms of
11 bonds?

12 A Not during the point in time that Ted was
13 telling me that he had everything with Ed under control.
14 Again, you're dealing with people that rule the family
15 with an iron fist. Obviously that was the case because
16 nobody called anybody though they had access to many
17 lawyers.

18 Q Would you say that this e-mail on the 6th kind
19 of caused you to get ramped up about doing something to
20 satisfy Carol --

21 A Yes.

22 Q -- and her lawyer?

23 A Yes. I remember it distinctly. I was in New
24 York at the time.

25 Q When you read this did, you read this as though

1 she's got a lawyer, that only a lawyer would draw
2 something like this?

3 A I read this as, if I don't do something drastic,
4 yes, I'm going to be in big trouble.

5 Q Because you know we lawyers don't write like
6 normal people and this looks like lawyer writing?

7 A Yes. It doesn't look like anything that Carol
8 had written to me prior.

9 Q Did you think that in the beginning when you saw
10 this, like, ah-oh, she's got a lawyer?

11 A Yes.

12 Q And so you go into damage control on September
13 the 8th. Do you recall that day?

14 A I went into damage control when I received
15 this. I received it when I was in New York.

16 Q And what happened?

17 A I attempted to call them. I couldn't get in
18 touch with them. I spoke to Ted, told him, big problems,
19 read him the e-mail. We discussed various options, and
20 we came up with the Court order hearing thing. I came up
21 with it. Ted agreed.

22 Q Now, let me kind of run through this. I'm going
23 to do it quickly. But it's important that I get it in
24 the record.

25 So on September 8 -- I don't know what day of

1 the week that was. Tuesday, September the 8th, seemed to
2 be a pretty busy day for you guys. And Ted came into
3 your office in the morning around 10:00. Do you recall
4 that?

5 A I don't recall the time, but I remember him
6 showing up, yes.

7 Q I'm going to show you an e-mail that will help
8 you there.

9 And did you invite him over so that you guys
10 could do something to answer Carol's demands from a
11 couple of days before?

12 A We discussed it the night before. He was going
13 to come over. We were going to do two things. We were
14 going to take a trip to the courthouse. I was going to
15 introduce him to the judge. I needed to talk to him
16 about some other things. We went ahead to the bank and
17 get a letter that I was going to put on top of the
18 account statements.

19 It was the standard process that we always used,
20 not Ted and me always used, that the people involved in
21 the Ponzi scheme always used in getting an original
22 letter which we attached with the bank's assistance to a
23 fake bank statement.

24 Q We're going to show you -- Ted was in your
25 office. And we're going to show you some stuff off your

1 computer to fix various times and the date in terms of
2 when you typed the phony order?

3 A Sure.

4 Q But, when Ted came into your office, you went to
5 the Judge Seltzer first, and then you went to the bank?

6 A I believe that --

7 Q That's your memory?

8 A That's my memory.

9 Q The bank's got a video of you two walking in at
10 about 1:30 or so, which I'm going to show you?

11 A That would be after I went to see Judge Seltzer.

12 Q Okay. And when you went to see Judge Seltzer
13 the purpose -- You took Ted along. What was the purpose
14 of that? Why did you go to see Judge Seltzer? I mean, I
15 know Seltzer was going to enter the order, and I know the
16 order refers to Ted being there and testifying.

17 A Ted needed to have what I'll call plausible
18 deniability when he spoke to his father. He was going to
19 have to run with this because we were going to put --
20 there was a specific comment -- excuse me, comment.
21 There was a specific portion of the order that said that
22 Ted testified at length. And it was based upon his
23 testimony that this order, which was obviously very much
24 in Carol and Ed's favor was based upon in bulk on Ted's
25 testimony.

1 Ted and I discussed it. I said, "We can go over
2 and talk to Barry just in generalities. I stop by there
3 all the time, and I needed to pick up a book from him.
4 So I used that as my cover with Barry. He was giving me
5 something to assist him in attempting to get a federal
6 judgeship, his CV and all the pertinent material.

7 Q And so would it be fair to say that you took Ted
8 along for alibi purposes?

9 A Alibi purposes sounds about right. I took him
10 along so that he would have plausible deniability. He
11 went to the courthouse. He can identify Judge Seltzer
12 and had in fact talked to him.

13 Q Hadn't you guys already drafted the rough draft
14 of the Court Order even before you went in there to see
15 Seltzer?

16 A Yes.

17 Q Didn't you draft it with Ted sitting in your
18 office there from 10:00 until --

19 A It started being drafted way before 10:00 I'm
20 sure if you look at the computer. It was finished after
21 Ted got to the office.

22 Q Did Ted help you with that order?

23 A No.

24 Q Did he suggest any language in that order?

25 A No.

1 Q Did he see you drafting the order? did you do it
2 in his presence?

3 A I did it in his presence, but I don't know that
4 he knew what I was doing.

5 Q So the sequence of events is you go to see
6 Seltzer. How long was the meeting in Judge Seltzer's
7 office?

8 A In total maybe 15, 20 minutes. Not very long.

9 Q Wasn't Ted in there, you and Ted in there
10 together, and then Ted left, and he left you alone with
11 Judge Seltzer?

12 A That's correct.

13 Q And then you left and went to Weston; is that
14 your memory?

15 A Well, then Judge Seltzer gave me the book that
16 had all his judgeship material in it. I took the order,
17 placed it inside the book. Then we went to Weston.

18 Q And when you went to Weston you put on another
19 one of the shows that you did at the Weston T.D. branch,
20 right?

21 A Yes.

22 Q What we call shows --

23 A Yes.

24 Q -- and you call them shows.

25 MS. ROTHCHILD: Object to the form.

1 THE WITNESS: That was when I --

2 BY MR. SCHERER:

3 Q What did you do when you went to Weston with
4 Ted?

5 A We gave them the bank statement. We put on what
6 was commonly known in our firm and commonly known to T.D.
7 Bank as the show. Both Ms. Caretsky, Ms. Kerstetter,
8 Frank Spinosa and Bill Brock all referred to it as the
9 show.

10 Q And there was a cover letter with a phony bank
11 balance for the bonds' accounts that's allegedly in your
12 trust account?

13 A Real cover letter, fake bank statement.

14 Q It showed 57 million or whatever the bond number
15 was?

16 A Right.

17 Q I'm going to show that you in a minute.

18 A It actually made no sense because we had already
19 paid them some money, but yes.

20 Q As a matter of fact, you already paid them 10
21 million dollars before that, so that 57 was off by 10
22 million?

23 A Yes.

24 Q How could Ted or Morse Operations or Ed and
25 Carol not keep track of a 10 million dollar payment? I

1 mean, how do you explain that?

2 A You're going to have to ask them.

3 Q How about Ted, did Ted look at it? Did he know
4 that there wasn't any money in that account?

5 A He couldn't have cared less. I don't know what
6 he was looking at. We had discussed the night before
7 that we were going to the bank to get this letter to put
8 on top of the bank statement to give to his father. That
9 was as much as Ted was involved at that particular time.

10 Q Do you know whether Ted -- Did you ever express
11 to Ted that there really wasn't 57 million in here, that
12 this was a phony statement?

13 A We never discussed that one way or the other.
14 Throughout this, you'll see it runs the course, just so
15 you understand, that's not a discussion you have. That's
16 inferred in everything that's going on. If I had the
17 \$57 million in there, I would have given it back to
18 them. And if I had it and we didn't need to substantiate
19 this for Ed and Carol, I didn't need to drive to the bank
20 to go get this. I could have pulled it up on the
21 computer in Ed's office. I didn't need to go to the bank
22 to do this.

23 Q Right.

24 A In this day and age of computers, that whole
25 bank thing never made any sense to me, to anybody.

1 Q If you look at the actual shot screen from your
2 computer, it would have shown \$100 in that account,
3 right?

4 A The real one, sure.

5 Q Sure.

6 A Yeah.

7 Q Now, then you and Ted come back to your office?

8 A Yes. And then the phone call takes place.

9 Q Then the phone call. What phone call is that?

10 A This is the key moment with Ed and Carol. We'll
11 call it the Ted show.

12 Q Okay.

13 A We contacted Ed. Ted has Ed on speakerphone.
14 Ted tells his father that we won the hearing, basically
15 reads him portions right off the order. Ed asks me
16 several questions about it. And my whole game plan is
17 make Ted look as good as I can in his father's eyes,
18 which I did. He thanked us and that was the end of the
19 call. Ted took a copy of the order to deliver to Ed and
20 Carol.

21 Q Now, in that sequence there after you got back
22 from Court there's an e-mail. And I'm going to show you
23 where you ask for permission from Ed to have Ted testify
24 in the Court, right?

25 A Yes. One of the things that Ted and I discussed

1 was the fact that, you know, we left something out. How
2 the hell are you testifying on behalf of your father?

3 So I called Deloris, told her to please get
4 something and I dictated to her. I need an e-mail
5 immediately allowing Ted to testify on behalf of Ed and
6 Morse Operations, that he was -- excuse me -- just on
7 behalf of Ed that he was designated.

8 Q You did that after you came back from the bank?

9 A It was more of just the two of us kind of
10 sitting there and me mulling over in my head what could
11 go wrong as far as Carol was concerned. And I guess my
12 brain went to how the hell did Ted testify for Ed.

13 Q Now, the record I'm going to show you in a
14 minute I believe shows that you asked for permission to
15 testify after you got back from the punitive hearing?

16 A Right.

17 Q And then you -- the call on the order, the
18 punitive order that Judge Seltzer entered was made about
19 4:00, although you had had the order drafted hours, a
20 couple of hours before according to your computer. Does
21 that ring a bell to you?

22 A It sounds to me, Mr. Scherer, that what actually
23 occurred with regard to the timing of what occurred and
24 what occurred as far as what we were telling Ed and Carol
25 occurred are different. It sounds to me like we told

1 them that we got the order, which sitting here thinking
2 about it makes more sense. I don't have specific
3 recollection as to the exact times.

4 Q Let me see if I can help you.

5 A Sure.

6 Q Give me a minute here. We're going to give you
7 a composite here that are these blowups that we have of
8 the actual documents. Let me see if I can't put it all
9 together to speed this up.

10 MR. KOPAS: Exhibit 19, composite exhibit. It's
11 Page 65 from the Power Point, Page 69 from the Power
12 Point. It's also a T.D. Bank's Statement, Rothstein
13 S105, 106. It is Ed's authorizing Ted to testify,
14 e-mail Rothstein 93. It's the fake Court order,
15 Rothstein 107 and 108. It's also a series of Ted
16 testified e-mails, Rothstein 902, 904, 905, 906 and
17 907. That's Exhibit 19.

18 (Whereupon, Plaintiff's Composite Exhibit No. 19
19 was marked for identification.)

20 BY MR. SCHERER:

21 Q Mr. Rothstein, let me show you Composite
22 Exhibit 19, and I'd like you to look at that. For some
23 reason I can't find your metadata from your computer
24 which I have that shows when you actually typed all that
25 stuff.

1 A Okay.

2 Q But I'll get it in the record maybe before this
3 deposition it is over in 10 days.

4 MS. ROTHCHILD: Can we just have an objection to
5 that exhibit, please?

6 THE WITNESS: Okay.

7 MR. SCHERER: Sure.

8 MS. CARETSKY: Thank you.

9 BY MR. SCHERER:

10 Q What have you got there? I kind of pulled my
11 things apart. What's that first thing?

12 A Ted goes to Rothstein's office, 10:00 a.m.

13 Q Okay. That's an e-mail from one of your
14 assistants that shows that Ted was there?

15 A Yes. That's my main secretary letting me show
16 he's there.

17 Q He came in to see you?

18 A Correct.

19 Q That's consistent with your memory?

20 A That's correct, yes.

21 Q All right. And then what do you have next?

22 A 12:45 we go to T.D. Bank.

23 Q Now, but we know that between the 10:00 and
24 12-whatever-that-is, 12:45, you went to Judge Seltzer;
25 correct?

1 A That's my recollection that that's when we
2 headed over to Judge Seltzer.

3 Q Then you see the snapshot of the surveillance
4 video with you and Ted walking in to get the \$57 million
5 balance, right?

6 THE WITNESS: Yes.

7 MS. ROTHCHILD: Objection to form.

8 MR. SCHERER: What's wrong with the form?

9 MS. ROTHCHILD: In addition to leading, it's
10 assuming facts not in evidence.

11 MR. SCHERER: I'm sorry?

12 MR. CRAIG: Lack of predicate.

13 MS. ROTHCHILD: Lack of predicate. Thank you.

14 BY MR. SCHERER:

15 Q What is that exhibit that you see there as part
16 of the composite exhibit? Would you describe that for
17 us, please.

18 A Yes. It's the inside of the main T.D. branch
19 out in Weston where I did business. That's Mr. Ted Morse
20 and I walking into the bank.

21 Q Okay. And your purpose of going to the bank was
22 to do what?

23 A I needed the original letter from either
24 Ms. Caretsky or Ms. Kerstetter. I don't remember who.
25 Well, it says right here, Ms. Caretsky, to place on top

1 of the phony bank statement that we created.

2 Q Did you bring the phony bank statement? Do you
3 have a recollection of how that phony bank statement got
4 there? You can't tell from there, but I --

5 A Yeah. Go ahead. What were you going to say?

6 Q Let me ask you this: Do you have a recollection
7 as to how that statement got there?

8 A Well, one of two things happened, or one of
9 several things. Either Bill Brock brought it to
10 Ms. Caretsky, as was the normal process. That's Bokfor
11 (phonetic),. He goes by Brock.

12 Q Right.

13 A As was our normal process when we were doing
14 this. Or I brought it with me and put it with the
15 letter, one or the other.

16 Q All right. And then what do you have there?
17 Then you have a copy of Ms. Caretsky's letter with
18 attached phony bank balance, right? Is that what you've
19 got there in front of you?

20 A I've got the original letter with the statement
21 we created.

22 Q Correct. And that statement is, how much is in
23 that statement, 57 million?

24 A \$57,982,110

25 Q And you represent -- and I recall your testimony

1 that you had paid that down by some amount of money?

2 A 10 million and change.

3 Q All right. And then what's your next document
4 there?

5 A This is the authorization letter that I dictated
6 to Deloris for Ed to have Ted testify on his behalf.

7 Q That was, what is the time of that?

8 A It says 2:25 p.m. So one of two things, just to
9 make sure my testimony is clear, one of two things
10 occurred. Either we told Ed and Carol that the hearing
11 was occurring later in the day or we did this after the
12 fact, one or the other.

13 Q Okay. And then you have an e-mail transmitting
14 the -- well, then you have Judge Seltzer's phony Court
15 Order, right?

16 A That's correct.

17 Q You photo-shopped his signature onto that?

18 A The signatures were all done by Ms. Villegas. I
19 don't know whether she photo-shopped it or how she -- it
20 looks like a cut and past job to me.

21 Q That's how I use photo-shopped, meaning it was
22 his actual signature that --

23 A His actual signature placed on a phony order.

24 Q Right. Okay. Then what do you have? You have
25 a transmittal of the phony order to the Morses?

1 A This is the order. It's sent to Deloris so that
2 Ed got it. It's sent to Cammissy so Carol got it. And
3 it's sent to Ted Morse at mail so he had an additional
4 copy on his compute.

5 Q So as I recall that order said that the
6 \$59 million that you were holding in trust would be
7 returned in, I don't know, a month or something like
8 that, five weeks.

9 A In so many days, yes.

10 Q So many days?

11 A Sure.

12 Q And --

13 A In between this, just so you've got your order
14 correct --

15 Q Right.

16 A -- in between this is sometime between arriving
17 back from the bank and the time we're sending this order
18 over to Ed and Carol is the telephone call where Ted's
19 talking about testifying the other things.

20 And the unique thing to remember, Mr. Scherer,
21 during this entire thing is that during the course of
22 sitting with Judge Seltzer, Ted didn't say five words.
23 He sat there basically quiet the entire time, and Judge
24 Seltzer and I basically talked mostly about skiing and
25 his upcoming wedding.

1 Q Then after you sent that e-mail attaching the
2 order in the e-mail, don't you invite Ed and Carol to
3 talk to Ted because he was there?

4 A Yes.

5 Q And Ted --

6 A Actually there was some more pressure right
7 after that coming from Carol. I believe she either-- I
8 either spoke to her or got a snooty e-mail from her.

9 Q Would that snooty e-mail say the next day you
10 did all this and took care of the IRS all at the same
11 time?

12 A Amazing.

13 Q Amazing --

14 A Yes.

15 Q -- or marvelous or something like that?

16 A Yes.

17 MR. KOPAS: Exhibit 20, it's on Page 82 from the
18 Power Point, the so-called snooty e-mail.

19 (Whereupon, Plaintiff's Exhibit No. 20 was
20 marked for identification.)

21 BY MR. SCHERER:

22 Q She says to you -- This is the next day, right?
23 Yeah. Scott, you handled the courts and the IRS in less
24 than eight hours. Is that a miracle or what?

25 A Yes.

1 Q Please e-mail me the updated Jan Jones
2 settlement money, update on the Jan Jones settlement
3 money, correct?

4 A Yes.

5 Q And then thereafter I know there's e-mails, I
6 don't know if I provided them to you in that composite,
7 back and forth between you and the Morses about Ted's
8 testimony that day and using Ted to testify again if
9 necessary?

10 A Yes. We went through the whole thing about Ted
11 making it -- it's in the September 9th e-mail to -- well,
12 it was sent to three people, to Carol Morse, to Ed Morse
13 via Dolores Daoust, and to Ted Morse all at their various
14 e-mail addresses. And it specifically talks about the
15 fact that Ted made a very effective witness. I'm trying
16 to get back into Court. And of course if you want to
17 know what went on during the hearing and all the
18 testimony and questions that were asked, ask Ted, he was
19 there, he testified.

20 Q After that point you owed them on the bonds
21 \$49 million and --

22 A Correct.

23 Q -- you got back another -- you paid them another
24 20 million or so after that point, as I understand it.
25 Does that sound about right to you? Let me ask it --

1 That's a bad question. Let me ask it better.

2 You were trying to get them back all of that
3 bond money as fast as you could from the Ponzi scheme,
4 right?

5 A Yes.

6 Q And if you got back all their money except for
7 20 million, that means that you got back -- you got the
8 Morses money back on those bonds between that fake Court
9 Order of Judge Seltzer and the time of the actual crash
10 on Halloween '09?

11 A Correct.

12 Q If we were to look at that Seltzer fake order,
13 Judge Seltzer fake order, it orders the repayment back in
14 four weeks with one post dated check?

15 A That's correct.

16 Q But, you made a series of payments that was not
17 one post dated check, and you never did pay the whole
18 thing back?

19 A That's correct.

20 Q Was there ever any discussion -- I can't find
21 anymore fake orders that allowed you to make partial
22 payments rather than the one payment.

23 A There are not any.

24 Q And was there ever any dialogue from the Morses
25 about, Where is the orders that allow us to get our money

1 back, you know modifying that order?

2 A Only between Ted and I.

3 Q Not between Carol and -- What happened as far as
4 Carol and Ed? Did they stop bugging you?

5 A No. That's the reason Ted and I he those
6 conversations. What occurred was, I told Ted, Listen,
7 whatever I got I'm going to be sending them. Okay.
8 Because the more pressure I take off Carol, the less
9 she'll bother Ed, the less she'll bother me.

10 And that's when it was decided. It was never
11 discussed that we thought we needed additional fake
12 orders to do that. I was just going to try to put money
13 in their hands as quickly as possible.

14 Q I can't find anymore e-mail correspondence or
15 correspondence with them to you during this time that you
16 were paying them back right before the crash complaining
17 about, Why am I not getting a lump sum payment? I don't
18 think. I'm not sure if there's any --

19 A I don't recall one way or the other whether
20 there was or not. I just had it in my head we were going
21 to get them the money back as much as possible as quickly
22 as possible.

23 Q Did you ever discuss with Ted whether Ed and
24 Carol took you up on your invitation to talk to Ted, he
25 was there, he testified brilliantly? Did Ted ever come

1 and say, Mom and dad talked to me, or, My dad and my
2 step-mom talked to me?

3 A Ted said, you have to understand, it was an
4 ongoing thing with Ed. Ted rarely talked to Carol. It
5 was an ongoing thing with Ed about this because of all
6 the pressure Carol was putting on Ed. So yes.

7 Q And my question is that, When you invited them
8 to talk to Ted, he was there, do you know whether they
9 did that or not?

10 A Carol did not. Ed did.

11 Q Ed did talk to him, and Ted told his dad that he
12 was there at the hearing and testified?

13 A He told them that once in front of me and
14 multiple times subsequent to that.

15 Q Okay. Thank you. We're going to change topics
16 now a little bit.

17 A Okay.

18 Q They wouldn't let the paralegals in here. You
19 can only have lawyers, so I'm having to use lawyers as
20 paralegals. They're not as good.

21 Mr. Rothstein, when did you start banking at
22 Gibraltar bank, do you recall?

23 A I have no independent recollection.

24 Q Do you have any reason why you chose Gibraltar?

25 A I was actually solicited by them to come to the

1 bank by John Harris.

2 Q Who is John Harris?

3 A He was a market manager for them as best as I
4 recall. He ran the Fort Lauderdale market for Gibraltar.

5 Q You opened from the time you started -- and
6 we'll have -- I'll help you with the dates as soon as --
7 I don't have them memorized either, but we'll get there.
8 You opened a number of accounts at Gibraltar during the
9 time of this Ponzi scheme and your illegal activities at
10 the law firm, correct?

11 A That's correct. We had been at Colonial and he
12 moved the accounts to Gibraltar.

13 Q You had trust accounts, operating accounts,
14 payroll accounts?

15 A Correct.

16 Q Real estate trust accounts?

17 A Correct.

18 Q And some other accounts like a W.A.W.W. What in
19 the world is that?

20 A What a wonderful world.

21 Q What's what we thought. What was the purpose of
22 that account?

23 A There were a bunch of them. At one point in
24 time when I was purchasing assets and also when Steward
25 and I were purchasing assets together they went into

1 various corporate entities, and we wanted to have each
2 one in a separate entity for asset protection purposes.
3 and so we just started numbering them W.A.W.W. accounts.

4 **Q Okay. Can you summarize the activity during the**
5 **time of the Ponzi at Gibraltar. Just how -- what went on**
6 **there? I'm going to ask you a lot of specific questions,**
7 **just as an overview.**

8 A Yeah. Ultra high volatility millions of dollars
9 going in and out on a daily basis, sometimes millions of
10 dollars going in and out within minutes. It was a very
11 volatile banking relationship.

12 **Q By "volatile" what do you mean?**

13 A Several different things. One, it was volatile
14 in terms of the number of transactions. I believe that
15 we were their largest wire customer at one point in time,
16 or certainly up there.

17 It was also volatile in of the amount of
18 scrutiny we were getting from certain due diligence folks
19 down in Coral Gables, which is their main office, and
20 from in BSA AML officers.

21 **Q AML, is that anti-money laundering?**

22 A BSA, Banking Security Act, Banking Secrecy Act.
23 And AML, anti-money laundering, that would have been
24 Julie Ansari and Chuck Sanders.

25 **Q Now, was this bank important for your Ponzi**

1 **scheme?**

2 A Critical.

3 **Q And why?**

4 A Because I had John Harris in my pocket and later
5 had Steve Hayworth in my pocket, and they were essential
6 for me being able to do what I needed to do without
7 having interference with the federal or state
8 authorities.

9 **Q To run a \$2 billion Ponzi, is having 2 banks**
10 **important, more than one bank?**

11 A Say that again.

12 **Q You've got a \$2 billion Ponzi. And I want to**
13 **know whether having two banks is important in terms of**
14 **how you operated the Ponzi?**

15 A It was important initially to have Gibraltar.
16 It became important when I started dealing with the hedge
17 funds and was really growing this to have a second and
18 much larger bank because my investors, the feeder funds,
19 wanted it. Ultimately it became a very, very smart,
20 let's call it a smart criminal decision on my part
21 because we ended up at a bank where we were also able to
22 place key players into our pocket.

23 **Q I'm going to get into that as we go through**
24 **these e-mails. There appear to be a number of**
25 **transactions where money would go into Gibraltar and then**

1 go to T.D. and then go either back to Gibraltar or
2 vice-versa a number of times moving between the two
3 banks.

4 A A tremendous amount of movement between the two
5 banks, yes.

6 Q What was going on there?

7 A All kinds of different things. Everything from
8 covering investor payments, covering law firm payments,
9 covering personal expenses for myself, Mr. Rosenfeldt
10 Mr. Litman, Mr. Adler, Mr. Boden, a whole myriad of
11 things.

12 Q Were you also kiting? Was there kiting going on
13 at the same time as your Ponzi, and that is using the
14 different bank accounts to --

15 A From time to time we would float the money.
16 That wasn't a standard occurrence for us at that point in
17 time, but it certainly occurred.

18 Q And if I told you there appear to be over 400
19 overdrafts in the operating account and more than 400
20 overdrafts in the RRA Banyon account, would that surprise
21 you?

22 A Not in the least.

23 MR. CRAIG: Objection to the form.

24 BY MR. SCHERER:

25 Q Okay. How many overdrafts do you think you had

1 in the Banyon RRA account?

2 MR. CRAIG: Form; what bank?

3 MR. SCHERER: At Gibraltar, that's where the RRA
4 account is, and I'll show you that in a minute.

5 BY MR. SCHERER:

6 Q Do you have any idea --

7 A It was hundreds of overdrafts in I believe
8 almost all of our accounts when you combine all the RRA
9 accounts together, yes.

10 Q And what would happen when you overdrew an
11 account?

12 A Nothing.

13 Q In terms of communication between you or among
14 the bankers and you, would there be communication with
15 each overdraft either by way of e-mail or telephone
16 calls?

17 A Sure. I would receive e-mails, telephone calls,
18 and the like from Mr. Harris or Lisa Ellis who was
19 actually the bank manager telling me I needed to cover,
20 and we would move money to cover.

21 Q I was going to have you do this later, but my
22 helpers say I should ask you to explain what you mean by
23 "in your pocket" with respect to Harris and then later
24 Hayworth, Mr. Hayworth.

25 A Harris was in my pocket by me supplementing his

1 lifestyle to the extent that I changed his lifestyle. He
2 received gifts from me. He traveled with me
3 extensively. He was on our permanent guest list for all
4 of our sporting events including Dolphin's stadium and
5 the Heat. Traveled with me on charter private aircraft
6 to all kinds of sporting events. I took him to several
7 thousand dollar a plate smokers for the various charities
8 I was involved in.

9 He was one of those people that was living the
10 rock star lifestyle in exchange for protecting us at the
11 bank. He also had a promise from me that at a point in
12 time either if he had a problem with Gibraltar Bank or at
13 the appropriate time when I needed him that he was going
14 to come and actually work for me at a substantial salary
15 with a participation ability in our deals to oversee all
16 the deals, to basically supplement what David Boden was
17 doing for me as general counsel.

18 **Q How about Mr. Hayworth?**

19 A Hayworth was simple. He needed an investor for
20 the bank, and I invested \$5 million.

21 **Q You did that at the very, very end, as I**
22 **remember.**

23 A That's correct. But we had also -- they called
24 it within the bank centers of influence. I was a
25 substantial center of influence for Gibraltar Bank.

1 Mr. Hayworth knew it. Hayworth for a very long period of
2 time had been talking about purchasing Gibraltar back
3 from Boston Private who had purchased it. And there was
4 always the belief by me, certainly as communicated to me
5 by Mr. Hayworth, by Ms. Ellis, and by John Harris that
6 the more I did for the bank, the better it would be for
7 me. And ultimately down the road I'd be having a
8 relationship with not only the CEO chairman of the bank,
9 but the guy who that orchestrated the purchase of the
10 bank.

11 Q Was there ever a conversation or any
12 conversation with any of those folks concerning your
13 regulatory problems, compliance problems, vis-a-vis
14 becoming a major shareholder in the bank?

15 A Yes. I was told by Harris and by Steve Hayworth
16 that we don't investigation shareholders of the bank.

17 Q That gave you some insensitive to become a
18 shareholder?

19 A That's the one and only reason I invested.

20 Q Let me give you some e-mails here -- some
21 exhibit here. Excuse me. This is an e-mail, November 3,
22 2008, from you to Lisa Harris. Actually it starts out
23 from Lisa Ellis to you on November the 3rd and then your
24 response.

25 MR. KOPAS: Plaintiff's Exhibit 21, Bates

1 labeled Rothstein S938, 939.

2 (Whereupon, Plaintiff's Exhibit No. 21 was
3 marked for identification.)

4 BY MR. SCHERER:

5 Q Take a look at that. It starts out her to you,
6 I need at least 51k for your personal account before noon
7 deadline.

8 A Yes.

9 Q Really cracking down on this. Can I transfer
10 from Banyon to operating and then to you?

11 A Yes.

12 Q Do you see that?

13 A I do.

14 Q And then your response is, What did you say?

15 A Go ahead. Do what you need and then tell me,
16 advise, then advise.

17 Q I mean, there's literally dozens and dozens and
18 dozens of these kinds of e-mails back and forth among you
19 and your bankers.

20 A This is standard operating procedure for the way
21 I did business with Gibraltar.

22 Q In looking at that, it appears to be a regular
23 in that the Banyon account, I presume that's the Banyon
24 RRA, which was your account --

25 A Yes. Just so you're clear to me --

1 **Q Yes.**

2 A There's always two Banyon accounts. There's the
3 George Levin Banyon the 1030-32 account.

4 **Q Right.**

5 A And there's what we'll call RRA Banyon, which
6 started out as a trust account. Somewhere along the
7 lines we changed it from trust account to a regular
8 account.

9 **Q Okay. So, whether it was changed or not at this**
10 **point, do you know whether it was a trust account or not?**

11 A I don't know. The only reason we changed it was
12 because Preve and I had a conversation about the amount
13 of activity and we should probably try to take it one
14 step down off the radar.

15 **Q Being a trust account shouldn't have that kind**
16 **of volume in it?**

17 A Right. Well, the way -- right. The main
18 concern was that it was money going in the same bank
19 because Banyon's 1030 account was in Gibraltar as well.

20 **Q Okay.**

21 A So if we have an inter-bank transfer, the funds
22 go -- for example, 5 million from Banyon 1030 account
23 into Banyon RRA, and then always from Banyon RRA right
24 out into whatever account we needed the money in, whether
25 it be one of our trust accounts, operating, payroll,

1 personal accounts, or perhaps even shipping it out to
2 commerce.

3 Q And just so the record is clear, you didn't have
4 authority, or did you have authority, to draw on the
5 Banyon account, not the Banyon RRA, but the Banyon
6 1030-32 account?

7 A No, sir.

8 Q Thank you. Let me show you an e-mail from
9 Harris to you and then your response back. It's dated
10 November 12, '08.

11 MR. KOPAS: Plaintiff's Exhibit 22, e-mail,
12 November 12, 2008, Bates labeled GIB HARRIS 034527
13 through 34528.

14 (Whereupon, Plaintiff's Exhibit No. 22 was
15 marked for identification.)

16 BY MR. SCHERER:

17 Q Take a look at that. The e-mail is, Hey,
18 Scotty, Scotty O, I guess, please see below the amounts
19 needed to cover overdrafts in the Rothstein firm
20 accounts. Also there's \$122,000 in the operating which
21 is not sufficient to cover the total overdrafts. Can we
22 get some additional funds into the operating, and then
23 please authorization a transfer from RRA operating to
24 cover below referenced overdrafts. Thanks, Brother.
25 John.

1 Do you see that?

2 A Yes.

3 Q And then you instruct Irene to put 1 million in
4 operating and then pay what needs to be transferred?

5 A That's correct.

6 Q What's going on here?

7 A This is standard operating procedure with
8 Gibraltar. My conversations and my deal with Harris and
9 Ellis were simple. Any time there's any problem with the
10 account, notify me, and I'll let you know how to move or
11 where to move. That accelerated to the point where they
12 were, I basically just told them, move what you need to
13 move and let me know what you've done.

14 Q And did they do that?

15 A On many occasions.

16 Q And did they move from trust accounts to
17 operating accounts --

18 A Sure.

19 Q -- if you had money in a trust account and you
20 didn't have money in an operating account?

21 A I move it from whatever account had money to
22 whatever account needed money.

23 Q How does a lawyer move from his trust account to
24 his operating account like that if the trust is holding
25 clients funds?

1 A You don't.

2 Q Now, let me show you another e-mail.

3 MR. KOPAS: Exhibit 23, Bates labeled GIB
4 003415, 3416.

5 (Whereupon, Plaintiff's Exhibit No. 23 was
6 marked for identification.)

7 BY MR. SCHERER:

8 Q This is an inter-bank e-mail with Julie Ansari.
9 Do you know who she was?

10 A I certainly do.

11 Q She was a compliance officer?

12 A I believe at this time she was the BSA officer.

13 Q Okay. BSA, bank security. All right. To John
14 Harris, cc to Hayworth, Sanders and Lamazares; right?

15 A Yes.

16 Q And, you know, without reading the whole thing
17 I've kind of highlighted that for you?

18 A I'm familiar with these e-mails.

19 Q Are you familiar with this document?

20 A This and many others, yes.

21 Q What is the gist of this? Did you see this, by
22 the way, when it -- I mean, it wasn't to you, but did
23 Harris make this available to you?

24 A As far as I know, okay, I saw either every or
25 practically every e-mail. You should have e-mail traffic

1 where John is forwarding. As a matter of fact, he got
2 jammed up on one of them where he sent it to me and Sari
3 actually wrote to him and said, What the heck are you
4 sending that to him for? You're not supposed to.
5 Subsequent to that I would go to his office or he would
6 come to my office and bring me the e-mails so I had a
7 head's up as to what BSA AML was doing and do what my
8 sensitive points were.

9 Q All right. Let me just go through this
10 quickly. It starts out, John. That's to Harris. As per
11 our meeting with Mr. Hayworth, we need the following:
12 One, personal financials for George Levin. Do you know
13 if you ever gave him personal financials?

14 A I do not, no. I don't know what Mr. Levin and
15 Frank provided them.

16 Q Personal financials from you, did you ever do
17 that?

18 A I doubt it.

19 Q And then law firm's financials for '08?

20 A I doubt it.

21 Q A thorough written explanation as to how their
22 pre-settlement judgment funding business works,
23 including -- and then it lists some things they wanted to
24 get. Did you ever give them that?

25 A I never gave Gibraltar Bank anything that you

1 would qualify as thorough written.

2 Q Okay.

3 A Cursory at best.

4 Q Down there you can see I have highlighted for
5 you, Please provide copies of the investment contracts
6 with these hedge funds and backup information identifying
7 where they are registered and who are the principals.
8 Did you ever give them that?

9 A No. Cursory information.

10 Q You never told them about Murray Huberfeld?

11 A No.

12 Q Or Mr. Bodner or those guys?

13 A I may have told them about the people. That's
14 probably how they got these names, the Centurion and
15 Platinum and Level 3, but I gave them No real information
16 on this.

17 Q In the last paragraph it says: All information
18 provided must be detailed and received in a timely manner
19 within 10 working days?

20 A Yes.

21 Q Did that happen --

22 A No.

23 Q -- as far as you know?

24 A I'm telling you it never happened.

25 Q Okay. Do you know why not? I mean, what was

1 **your excuse to them and --**

2 A I didn't -- here's the way it worked.

3 **Q Okay.**

4 A I'd get a request. I would tell John there's no
5 way on God's green earth I am providing any of this. He
6 would run interference for me. He would call Steve
7 Hayworth if necessary because if you look through the
8 Gibraltar documents I'm sure there's something there that
9 shows that John was one of the few people in the bank who
10 was a direct report to Steve. He had no one between him
11 and the CEO. So I always felt comfortable talking to him
12 about this stuff and making sure information would be
13 properly relayed.

14 I would make up crazy excuses as to why I wasn't
15 providing it, why it was untimely. I sent them things
16 that maybe on the surface looked like they were
17 explanations, but they always wanted more. I had John
18 and Steve running interference for me. I never needed to
19 do it. And we ran interference for Levin and Preve.

20 **Q If they had insisted on this information,**
21 **thorough review, would you have been able to provide it**
22 **to them and keep the Ponzi going?**

23 A No.

24 **Q As a matter of fact, was the success of the**
25 **Ponzi based in part on your ability to keep this bank at**

1 **bay?**

2 A Absolutely.

3 **Q I'm going to show you --**

4 MR. KOPAS: Plaintiff's Exhibit 24, Bates
5 labeled Rothstein S967, 968.

6 (Patient's Exhibit No. 24 was marked for
7 identification.)

8 BY MR. SCHERER:

9 **Q This is an e-mail chain that I'm pretty sure**
10 **you'll remember. Sanders to Ansari, overdraft and large**
11 **cash withdrawal?**

12 A Yeah, I remember this.

13 **Q What do you remember about it?**

14 A I was getting money over to Tony for something,
15 Tony Bova my partner in the restaurant group. And
16 instead of attempting to deposit the check as I thought
17 he was going to, he went and attempted to cash it on an
18 account that did not have enough money to cover it.

19 I was contacted by the bank about this. I told
20 him he wasn't supposed to try to cash it, but I'll make
21 good on it. Please pay the check. And my recollection
22 is that they did.

23 **Q Thank you.**

24 MR. KOPAS: Plaintiff's Exhibit 25, Bates
25 labeled Rothstein S1003, 1004.

1 (Whereupon, Plaintiff's Exhibit No. 25 was
2 marked for identification.)

3 BY MR. SCHERER:

4 Q I'd like you to take a look at this e-mail. It
5 starts out with Lisa Ellis on the second page there to
6 Irene Shannon. Who is she?

7 A Irene Shannon is the same person, Irene Stay.
8 She was our CFO.

9 Q If you read the little e-mail, it says, It's
10 me. Miss talking to you. Any chance I could transfer a
11 little from the operating to cover payroll overdrafts,
12 OD. Need about 25. And then you see down on the first
13 page it comes back and says to Shannon, transfer -- I'm
14 sorry. Down at the bottom, see down at the bottom --

15 A Sure.

16 Q -- where Irene Shannon Stay writes back, Of
17 course you may. And then Lisa says: Thanks, mom. You
18 see that?

19 A I do.

20 Q For the transfer.

21 And then up at the top you have Lisa going back
22 and saying, Can I still do, can I do 28,000? That will
23 cover the overdraft and payroll today and I don't have to
24 pester you anymore this morning about overdrafts. Scott
25 needs 37k in his personal, but maybe we can transfer it

1 to that later. Thanks, Irene. Sorry for the goof.

2 A Yes.

3 Q What's going on there?

4 A A couple of things. One, it shows the level of
5 Irene Shannon Stay's involvement in what we were doing,
6 where she had authority to move money as need be from
7 account to account, whether it be operating, trust, or
8 Banyon. It also shows where our relationship was with
9 Gibraltar with Ms. Ellis and Mr. Harris. In this
10 specific case, Ms. Ellis. They were always -- This is
11 way back in 2006, which I believe is early on in the
12 relationship. They obviously wanted us to have as few
13 overdrafts as possible and assisted us by keeping us
14 apprised as to what was going on in our accounts. Later
15 on you'll see e-mails where it's much more extensive and
16 much more detailed because we're not just trying to stop
17 overdrafts, we're trying to stop overdrafts so that we
18 don't show up on key management reports and keep the
19 radar off us.

20 Q We're going to get to that.

21 A Okay.

22 Q Let me show you our next Exhibit.

23 MR. KOPAS: Plaintiff's Exhibit 26, Bates
24 labeled Rothstein S1005.

25 (Whereupon, Plaintiff's Exhibit No. 26 was

1 marked for identification.)

2 BY MR. SCHERER:

3 Q It's an e-mail from Mr. Harris to you,
4 February 13, '07, and then your response. You can see
5 that subject, Scotty O., a lot of O's.

6 We need help in getting the OD in personal down
7 a bit. It's at 85,000, which is creating an issue when
8 looking at total relationship accounts. The operating
9 and payroll are also OD, but in more reasonable amounts.
10 Can we represent that you will make a minimum \$50,000
11 deposit in your personal account late today, early
12 tomorrow? thanks.

13 And then you respond, Absolutely, Chao.

14 A Yes.

15 Q Is this a little more detailed in terms of more
16 management? Well, you tell me. What is going on here?

17 A This is Harris fulfilling his obligation to me
18 as we had agreed. He's wanting to make sure that our
19 accounts avoid scrutiny and telling me what we need to do
20 to do this. It's still early on in the relationship, but
21 this is before the bank is really kicking up a storm.

22 Once the bank was kicking up a storm he wouldn't
23 be writing me, Can I represent you're going to be making
24 a \$50,000 deposit tomorrow on an 85,000 plus overdraw.
25 At this point in our relationship I'm still floating

1 whatever money I feel like it through those accounts. I
2 basically had a running line of credit with the bank
3 without a credit line.

4 Q Let me show you another e-mail, please. It's
5 an e-mail to you on July 31, '07, to Lisa Ellis, John
6 Harris, and some others about a new bank account.

7 MR. KOPAS: Plaintiff's 27, Bates labeled
8 Rothstein S1006, 1007.

9 (Pleading's Exhibit No. 27 was marked for
10 identification.)

11 BY MR. SCHERER:

12 Q Now, you see that e-mail about opening the
13 account, the paperwork for the new account you gave it
14 as AAMM Holdings; do you see that?

15 A Yes.

16 Q And then, Once it's opened, please transfer
17 125,000 from MMA account to this account.

18 A Yes.

19 Q Don't worry about it affecting balance in MMA.
20 For line purposes I'm getting another wire in later
21 today.

22 A Yes.

23 Q Did you provide other information about this
24 account when they opened it other than this?

25 A I never did, no.

1 Q Is this indicative of the way you would be
2 opening accounts there as far as you can remember?

3 A To the best of my recollection, yes.

4 Q I mean, in your experience didn't banks require
5 you to say what you were doing the account for, why it
6 was opening, the purpose of the account, et cetera?

7 A In my experience, yes. Gibraltar, no.

8 MR. KOPAS: Plaintiff's Exhibit 28, Bates
9 labeled Rothstein S 1011, 1012.

10 (Plaintiff's Exhibit No. 28 was marked for
11 identification.)

12 BY MR. SCHERER:

13 Q It starts out as a wire on Wednesday,
14 September, 19. And then you can see you get a
15 notification of an incoming wire. Then you give them
16 some directions. Do you see that?

17 A Yes. This is at the point in time where our
18 Banyon account was still a trust account.

19 Q And so you say, Entire wire needs to be
20 transferred from the trust account. So presuming the
21 wire went into the trust account?

22 A Yes. The wires and transfers almost always, if
23 not always, went from Banyon's 1030 account into our
24 Banyon account.

25 Q But the wire was from 260, and the entire wire

1 went into the trust account, and then from the trust
2 account to the operating and then your personal?

3 A That was the standard method of moving money.

4 Q Then from your personal to the real estate trust
5 account?

6 A Correct.

7 Q Okay. Well, if those were all client funds, how
8 in the world would that work? I mean, if the money, 260,
9 came into a trust account, presumably client funds for
10 trust account, and then it went to your operating
11 account, then from your operating account to your
12 percentage account --

13 A I understand that, but everyone knew that it
14 wasn't client funds.

15 Q Okay.

16 A It was supposed to be client funds because
17 that's what you use a trust account for. If you look at
18 the history of the RRA Banyon account --

19 Q Right.

20 A -- money rarely sits in there. It goes from
21 there right out. I'm sure you've seen the e-mails where
22 they're even asking me, Can I take money out of the
23 Banyon account?

24 Q Did they ever talk to you about the velocity
25 that is how fast that money was flowing through the

1 account?

2 A Who is they?

3 Q Anybody at -- thank you. I'll be more
4 specific.

5 A That's okay.

6 Q Anybody at Gibraltar, any of the officials,
7 Harris or anybody saying, you know, it's suspicious when
8 the money goes in and out so quickly, velocity --

9 A Harris, no; Ellis, no; Sanders, yes. Ansari,
10 yes; Hayworth, no.

11 Q And they would say it to you, but did it affect
12 your behavior there in terms of how - or your usage of
13 the accounts?

14 A Nothing I ever did with Gibraltar ever affected
15 my ultimate usage of my accounts there.

16 MR. KOPAS: Plaintiff's 29, Bates labeled Stay
17 500008416.

18 (Plaintiff's Exhibit No. 29 was marked for
19 identification.)

20 BY MR. SCHERER:

21 Q This is a another e-mail, it starts out from
22 you on December 14, '07. And it discusses the transfers
23 from the trust account to the operating and then from
24 the operating to the real estate trust account, 750, you
25 see that?

1 A Yes.

2 Q And you say down there: Irene, the 750,000 is
3 fees slash Levin or Levin?

4 A Yes.

5 Q What is that a reference to?

6 A That's just how I wanted her to book it. At
7 certain points in time it got more lackadaisical as the
8 velocity of the Ponzi increased. At certain points in
9 time you'll see in e-mails where I tell her to book
10 something a certain way, what you'll see that's the tail
11 on all this is that there were no Levin legal files nor
12 were there any Levin bills. I wanted it booked that way
13 for accounting purposes.

14 Q Then you've got Mr. Fernandez from the bank:
15 Good morning, your transfers have been processed?

16 A That's the way it always went.

17 Q So, it's your testimony that there wasn't really
18 a Levin case and no Levin fees for 750?

19 A That's correct.

20 Q If the bank had gone back and asked you to prove
21 that and verify that and really gotten behind the bottom
22 of that transaction, what would they have learned?

23 A Nothing that I wanted them to learn.

24 Q That's for sure. But they --

25 A They would have learned that it was simply me

1 pilfering that account for use for our operating account,
 2 cover a shortage obviously in real estate trust or
 3 something that me alone or me and one of the partners was
 4 purchasing. I don't know what was going on in December
 5 2007.

6 **Q All right.**

7 MR. KOPAS: Plaintiff's Exhibit 30, Bates
 8 labeled Rothstein S 1024.

9 (Whereupon, Plaintiff's Exhibit No. 30 was
 10 marked for identification.)

11 BY MR. SCHERER:

12 **Q Pretty simple, June 25, '08 shows a transfer**
 13 **from Banyon to RRA, \$919,000, and it's G-104. G-104 is a**
 14 **reference of some kind of a settlement; right?**

15 A That's the reference that the Banyon folks,
 16 Preve would have put on their transfer so I knew what
 17 account to apply it to.

18 **Q And G is for Gibraltar, I guess?**

19 A No, G is George Levin.

20 **Q Okay.**

21 A That's his 104th deal.

22 **Q And so within the bank they transferred from the**
 23 **Banyon account to the RRA account?**

24 A Yes, that's Preve or Paul Levin's house manager
 25 making the transfer to us.

1 Q And why was that made? Do you know, was that
2 made because there was a business reason to make that or
3 was that made because of the Ponzi was short of money?

4 A No, it was to fund this particular Ponzi deal.

5 Q It was to fund that deal?

6 A Yeah, there should be a bunch of these. This is
7 specifically to fund -- this should match the paperwork
8 in G-104.

9 Q Okay. Thank you.

10 MR. KOPAS: Plaintiff's Exhibit 31 Bates labeled
11 Rothstein S 1026 and 27.

12 (Whereupon, Plaintiff's Exhibit No. 31 was
13 marked for identification.)

14 BY MR. SCHERER:

15 Q E-mail June '08. I don't know if you remember
16 any of these, but here's a e-mail from you to
17 Mr. Fernandez at the bank: One more wire up to Commerce,
18 so they cannot be -- commerce Bank; right?

19 A Um-hmm.

20 Q They became T.D.; right?

21 A That's correct.

22 Q One more wire up to Commerce so they can send me
23 six million smackers. Frank, please assist -- that's
24 Frank Fernandez, I guess, please assist Bill - that would
25 be Bill Brock, in immediately wiring 770,000 and change

1 **from RRA Banyon to Commerce?**

2 A Correct.

3 **Q What's going on there?**

4 A Okay. What it looks like to me is that we are
5 in the middle of completing a payment that has to pass
6 through one of our Commerce accounts. We were going to
7 send out that amount of money. Once that money hit
8 Commerce another deal would be funded from one of the
9 feeders back of six million probably and change. I doubt
10 it was six million even. That's normally the way the
11 cycle would work.

12 We would be making payments and then we would
13 get money back - sometimes we'd send money and get part
14 of it back; sometimes we'd send money and get double,
15 triple, quadruple.

16 **Q How did you get paid on a Ponzi deal like that?**
17 **How were you supposed to get your share of that deal?**

18 A I just took it.

19 **Q You just took it?**

20 A There was no formula to what anybody was
21 getting. If you look at the history, Mr. Scherer,
22 there's no formula for what any of the co-conspirators
23 are doing. Szafranski is the perfect example. We sent
24 made up invoices and sent him millions of dollars for
25 what he was doing for us. There was no rhyme or reason

1 to it.

2 Q You would take whatever you have needed and send
3 the rest to them and they would take what they needed and
4 send the rest to their investors.

5 A That's what everyone did. If you look at
6 Mr. Levin's history with Preve doing the banking there
7 should be a ton of e-mails -- there are in fact many
8 e-mails where Preve is telling me send me this much
9 money. I need to borrow it for a little while. You send
10 me this amount, I'll send it back to you as a mistake. I
11 need to borrow it for awhile. We need to \$5 million for
12 the to pay off George's interest in the building or buy a
13 new plane, whatever it was. Whatever money needed to be
14 moved, that's what we did.

15 Q Okay. I've seen some e-mails where it appeared
16 that Mr. Preve -- between you and Mr. Preve about George
17 being befuddled and not really following the bouncing
18 ball, so to speak. That's really not a very good
19 question, but it led me to believe that maybe Mr. Levin
20 didn't have as much awareness of what was going on as
21 Preve?

22 A I don't know. I cannot testify what his level
23 of knowledge was because I don't -- I was not privy to
24 the conversations between Preve and Levin. I do know
25 that Levin had the ability to monitor all of Preve's

1 e-mails on his main account because Preve and I had
2 discussed that numerous times. The e-mails are being
3 read, so if you want George to call you -- we used to
4 joke around, if you want George to call you write to me
5 and tell me, I can't reach George and miraculously he'll
6 call you.

7 But I don't think for a minute, based upon my
8 conversations with George, however, that George was in
9 the dark as to what was going on. But as far as detailed
10 conversations, Mr. Preve always seemed to be George's
11 insulation between him and what the rest of what was
12 going on.

13 MR. KOPAS: Plaintiff's 32, Bates labeled
14 Rothstein S 1028, 1029.

15 (Whereupon, Plaintiff's Exhibit No. 32 was
16 marked for identification.)

17 BY MR. SCHERER:

18 Q This is an e-mail June 30, '08, still in June.
19 These are illustrative e-mails that I've chosen here. It
20 starts out from you to the bank: Hi, kids, time for the
21 daily transfers to avoid ODs and the nasty charges that
22 come with them.

23 And then you've got transfers from RRA Banyon to
24 RRA operating; from RRA operating to your personal; and
25 from RRA operating to RRA payroll?

1 A Yes.

2 Q It seems that the trying to avoid these
3 overdrafts; was it because of the money or what was
4 going on here?

5 A At some point -- It was two-fold. One, it was
6 avoiding the charges. As a matter of fact, I convinced
7 John Harris - I'm pretty sure it was John, I convinced
8 John, I believe, there should be an e-mail where I
9 convinced him to actually reserve about 27,000 in
10 charges because they were getting ridiculous. To avoid
11 the charges and of course to avoid the scrutiny.

12 There should be more detailed e-mails floating
13 in and out about keeping these people off my back with
14 regard to avoiding these overdrafts.

15 And in looking at this also Mr. Scherer --

16 Q Yes.

17 A I note I'm sending this also to Frank
18 Fernandez, it's highly unlikely where you'll see my
19 language was much more colorful when I was talking
20 directly to John Harris and Lisa Ellis, I wouldn't be
21 nearly as colorful or as direct, for example, BSA, Coral
22 Gables issues with Mr. Fernandez as I would with
23 Ms. Ellis and Mr. Harris.

24 Q There was a -- I'll find it, probably next week
25 when I don't need it.

1 There was a letter where John Harris wrote you
2 and accused you of check kiting. Do you remember that
3 situation?

4 A Very well.

5 Q And then do you remember how you responded to
6 that? As a matter of fact, I found it. I didn't find
7 it, he found it.

8 MR. KOPAS: Who found it?

9 Q Let me show you July '07 letter to you and then
10 I'm going to show you another -- July 13, '07 letter to
11 you and then there's another July 13 letter that seems
12 to be a redraft of the first letter. And we'll put
13 those on as our next two.

14 A I you don't have my colorful response?

15 Q Oh, yeah, actually we do. I didn't want to
16 shock the jury.

17 MR. KOPAS: Plaintiff's Exhibit 33, Bates
18 labeled Raffalsk10155.

19 (Whereupon, Plaintiff's Exhibit No. 33 was
20 marked for identification.)

21 THE DEPONENT: I remember this whole thing,
22 Mr. Scherer, very well. I was more than slightly
23 upset.

24 BY MR. SCHERER:

25 Q He accused you of check kiting, which is what

1 **you were doing; right?**

2 A It is my understanding that a gentleman named
3 Peter Rapowski had contacted -- he worked in one of the
4 credit things - contacted Mr. Harris and said, it looks
5 like there's check kiting going on in Rothstein's
6 account and all this other garbage that was going on.
7 He instructed Mr. Harris to send me a letter warning
8 me. Harris wrote me the letter. I saw the words check
9 kiting, I was engaged in check kiting with Lippman and
10 previously with Caputi, with Rosenfeldt, and God knows
11 who else. I flipped.

12 And it certainly was outside - let's call it
13 the purview of my agreement with Mr. Harris. So, I
14 wrote a scathing e-mail back to him in a format that I
15 was hoping he would share with the higher ups, the
16 people that valued our business with Gibraltar, and for
17 lack of a better term, he genuflected back. And I
18 instructed him to write a new letter, to destroy the old
19 one. And he did.

20 MR. KOPAS: Plaintiff's Exhibit 34, Bates
21 labeled Rothstein S 000178, the scathing e-mail to
22 John Harris.

23 (Whereupon, Plaintiff's Exhibit No. 34 was
24 marked for identification.)

25 BY MR. SCHERER:

1 Q Do you have two pages here?

2 A They have it all in little print so I can't see
3 it.

4 Q We're not going to read it all. This is your
5 response to the check kiting letter that caused the
6 redraft of it that you were referencing.

7 A Yes, it's the standard, you've embarrassed me,
8 if you want my business and want me to continue sending
9 you business and you want me to continue to be a mouth
10 piece for the bank, et cetera, you'll stop this
11 foolishness and take care of the problem that you're
12 about to create for me.

13 Q Do you have the memory, the amount of business
14 that you referred to them?

15 A I don't know the dollar amount.

16 Q No, the people. I mean, I have it in here
17 somewhere.

18 A I remember a bunch of them.

19 Q Go ahead, tell us.

20 A All my businesses were going there, which were
21 frequent deposits in and out, legitimate business and
22 illegitimate businesses. I referred the Morses to
23 them. I was the reason that the Levins went to them.
24 Man, there were a lot of people.

25 Q Was Caputi's Iguana Cafe --

1 A Caputi eventually - when we took it over,
2 before that no, because the people that actually owned
3 it before I purchased it were staying with Bank of
4 America. But eventually -- there were other
5 businesses. I was in the process --

6 **Q Silverseas?**

7 A Silverseas, I referred over to them. I know
8 Albert opened accounts with them and actually did a
9 mortgage with them.

10 I introduced John to -- every -- the way it
11 would work is this, Mr. Scherer, every player I was
12 involved with, that I was making connections with, I
13 made it my business - because that's what bought me the
14 influence at Gibraltar Bank to have Harris by my side
15 and introduced him to everybody I knew.

16 **Q Roger Stone?**

17 A Yes.

18 **Q Obe levy?**

19 A Yes.

20 **Q Mel Taylor?**

21 A Yes.

22 **Q Tinachio?**

23 A Mel Taylor, by the way, do you know who Mel
24 is?

25 **Q I can't remember.**

1 A Mel is Barry Lipsitz's partner in Flash Dancers
2 in New York, very wealthy.

3 Q **T and L Investors?**

4 A Yes, that's development.

5 Q **Q Task?**

6 A Yes.

7 Q **Pinata Watches?**

8 A Yes.

9 Q **Adler's personal injury clients?**

10 A Yes.

11 Q **I've got one more.**

12 MR. KOPAS: Plaintiff's Exhibit 35, Bates
13 labeled GIB0031103113.

14 (Whereupon, Plaintiff's Exhibit No. 35 was
15 marked for identification.)

16 BY MR. SCHERER:

17 Q **This is an e-mail, Monday, March 9, '09.**
18 **Ansari to Harris, overdraft and large cash withdrawals**
19 **high, volume of -- I mean, high importance?**

20 A Yes.

21 Q **Actually it starts way back.**

22 A Right.

23 Q **If you go back to the Bates stamp page, that**
24 **starts with 12.**

25 A Right, that's where it starts with Tony Bova

1 attempting to cash the check.

2 Q That's the same check we were talking about?

3 A Yes.

4 Q And then it goes through all of the various
5 issues that that caused with the bank having Mr. Bova
6 try to get \$135,000 cash out of the bank?

7 A Yes.

8 Q And and then it ends up at the top with: I
9 think I'm sorry writing rather cynically, I'm glad to
10 know that he always covers the overdraft situation. As
11 you can see the movement of the money is highly unusual
12 on top of that, high velocity and leaving the bank in a
13 negative position in a daily basis?

14 A That's typical of the e-mails that Ansari
15 wrote.

16 Q Therefore the following questions need to be
17 answered, they go into various detailed questions, one
18 through five; right?

19 A Yes.

20 Q At any time were any of those answered or did
21 the bank ever investigate those in detail to determine
22 the facts surrounding paragraphs one through five?

23 A I never provided real answers to any of these
24 questions.

25 Q If in fact they had gotten the real answers to

1 these questions, what would that have done to your Ponzi
2 scheme?

3 A It would have exploded.

4 MR. SCHERER: That it. It's 5:00, a little
5 after. See you tomorrow.

6 (The proceedings were adjourned at 5:00 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF BROWARD)

I, TERRI L. WRIGHT, Notary Public in and for
the State of Florida at Large, certify that I was
authorized to and did stenographically reported the
foregoing proceedings and that the transcript is a true
and complete record of my stenographic notes.

Dated this 13TH day of December, 2011.

Terri L. Wright

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